

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Sixth Session
March 8, 2011**

The Committee on Transportation was called to order by Chair Marilyn Dondero Loop at 3:19 p.m. on Tuesday, March 8, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Dondero Loop, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblyman Kelvin Atkinson
Assemblywoman Teresa Benitez-Thompson
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblywoman Olivia Diaz
Assemblyman Scott Hammond
Assemblyman Joseph M. Hogan
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Mark Sherwood
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman John Hambrick (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16

Assemblywoman Debbie Smith, Washoe County Assembly
District No. 30

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst

Darcy Johnson, Committee Counsel

Mistia Zuckerman, Committee Manager

Janel Davis, Committee Secretary

Sally Stoner, Committee Assistant

OTHERS PRESENT:

Traci Pearl, Chief and Highway Safety Coordinator, Office of Traffic
Safety, Department of Public Safety

Tony Almaraz, Chief, Nevada Highway Patrol, Department of
Public Safety

Brian LaVoie, representing Hillary LaVoie Effort

Tina LaVoie, representing Hillary LaVoie Effort

Sandy Watkins, Private Citizen, Las Vegas, Nevada

Jenifer Watkins, Private Citizen, Las Vegas, Nevada

Patrick Moers, Captain, Police Department, City of Henderson

Capri Barnes, Cofounder, Friends That Click Together Stick Together,
The Monica Mapile Foundation

Kathleen Young, Private Citizen, Reno, Nevada

A. J. Delap, Government Liaison, Metropolitan Police Department, City of
Las Vegas

Cheryl Blomstrom, representing Nevada Motor Transport Association

Brian McAnallen, Director, Legislative Affairs, CenturyLink

Michael Geeser, representing AAA Nevada

John Griffin, representing Sprint

Lawrence P. Matheis, Executive Director, Nevada State Medical
Association

David Goldwater, representing Google, Inc.

Rex Reed, Ph.D., Administrator, Offender Management Division,
Department of Corrections

Deborah L. Byberg-Reed, Chief, Fiscal Services, Department of
Corrections

Tierra D. Jones, representing Clark County Public Defender's Office

Orrin J. H. Johnson, Deputy Public Defender, Washoe County

Chair Dondero Loop:

[Roll was called. Rules and protocol stated.] We will hear two bills today. I will open the hearing on Assembly Bill 151. Welcome, Assemblyman Atkinson.

Assembly Bill 151: Makes various changes concerning the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle. (BDR 43-12)

Assemblyman Kelvin D. Atkinson, Clark County Assembly District No. 17:

On a normal day sitting in traffic, I am next to someone who is too focused on typing something into his cell phone to pay attention to where he is going or what he is doing. This creates unsafe conditions for everyone else on the road. Let me give you an example of this. [Continued to read from prepared testimony ([Exhibit C](#)).]

To address this new phenomenon of the danger of text messaging while driving, 30 states and the District of Columbia have banned text messaging for drivers. Since this is such a growing problem, 12 of these laws were enacted in 2010 alone. I have provided a chart ([Exhibit D](#)) by the National Conference of State Legislatures, which displays those states that ban texting while driving. [Continued to read from [Exhibit C](#).]

As introduced, A.B. 151 provides that a first or second violation within the immediately preceding seven years is a misdemeanor. A third or subsequent violation within the immediately preceding seven years is a gross misdemeanor. Further, if a violation is the proximate cause of the death of or substantial bodily harm to another person, the violation is punishable as a category B felony. This will result in the revocation of a person's driver's license for three years.

A fiscal note was placed on the bill for this provision. I will be getting a proposed amendment to the Chair before you bring this to work session to revise these penalties. I know there have been questions because there were some perceived notions that I killed a similar bill last session. Through the legislative process, we tend to change our mind. This bill is an example of that. Several things have happened since last session, one being the growing concerns of people paying more attention to their cell phones while driving. We are all guilty of this behavior and understand the dangers. Today, you will be hearing personal stories from a lot of people. I have had the opportunity to hear from family members in my district about what has happened to their own family members while someone was either attending to the cell phone or not paying attention to the road.

I am not sure if the Committee is aware that the United States Department of Transportation Secretary, Ray LaHood, has made it known that the Administration will be going after states' highway funding and transportation dollars if they do not enact something. This is one of the reasons I thought it was time to address the problem of texting and driving; Nevada certainly cannot afford to not receive any of our highway or transportation dollars as we are gravely underfunded as is.

The National Conference of State Legislators (NCSL) document ([Exhibit D](#)) shows the 50 states that have or do not have enacted laws regarding the use of cellular telephones or other handheld communication devices while driving a motor vehicle. California enacted the law last session and ran into some obstacles doing so. We hope to learn from their issues and work around those problems. I encourage your support for this important and worthwhile legislation.

Chair Dondero Loop:

Are there any questions from the Committee for Mr. Atkinson?

Assemblywoman Neal:

I have two questions. First, do you feel that three years is a strict policy to revoke a license? Second, how will the police actually enforce someone texting? What is their ability and capacity to see somebody's actions below the window? Does this not open the door for illegitimate stops?

Assemblyman Atkinson:

To answer your first question, the three years is not a strict policy because it is after your first two offenses. If you are going to continue the behavior, there should be some strict penalties. I will let the officers respond to your second question. I am not sure it is difficult right now because it is not law. It is possible to visibly see what people are doing with their phones. I am not opposed to this bill being expanded beyond texting; in fact, it should be. I would yield to this Committee to expand the bill.

Assemblyman Frierson:

I had one question about the driver's license issue. I know there are provisions that revoke driver's licenses and people can get a provisional license, particularly in the rural areas where the Department of Motor Vehicles (DMV) allows individuals to drive to work or school with a provisional license. Was that something contemplated in this bill?

Assemblyman Atkinson:

It is something we looked at. I think we took that language from someplace else. It is a section in the bill we need to work on, which is why I would like to discuss with the Chair and the Committee some proposed amendments on penalties and fines because some people may see the harshness.

Assemblywoman Woodbury:

Will you clarify what a temporary traffic control zone is? Is it basically a construction zone?

Assemblyman Atkinson:

Can we ask the legal counsel, Darcy Johnson? However, I believe that is correct. [Darcy Johnson nodded yes.]

Assemblyman Hammond:

You mentioned that when most people text, it is visible. I challenge you to go into a high school classroom and catch a teenager texting. Most of them do not text out in the open. Given the opportunity, I am afraid that teenagers will find creative ways to get away with this. I hope law enforcement can tell me more about how they are going to decide if someone is texting or not. I find that this will create more ways for teenagers to do it. I have seen teenagers text for five or six minutes under the table and only get one word wrong; they are amazing.

Assemblyman Atkinson:

To Mr. Hammond's comments, I certainly understand that; however, if you look at the rates and the numbers, more adults are now texting. Expanding this bill to "handsfree devices in cars" eliminates a lot of that. I am open to this idea. You are right—we are not going to stop everybody—laws are laws, but they are broken. If teenagers, or anyone for that matter, think they can get away with it, they will. There are studies that indicate when states first went to anti-texting laws, they saw some rates increase the first year because that is exactly what was happening. I will not argue with you on that.

Assemblyman Carrillo:

Section 2, subsection 2, paragraph (a), reads, "2. the provisions of this section do not comply to: (a) A paid or volunteer firefighter, law enforcement officer, emergency medical technician, ambulance attendant or other person trained to provide emergency medical services who is acting within the course and scope of his or her employment." Could you elaborate and clarify when it says, "scope of his or her employment"? Does that give them the right to talk on the cell phone whether they are on or off the clock?

Assemblyman Atkinson:

I would assume we are talking about when they are in the scope of duty. We can clarify that if it is not clear enough in the bill.

Assemblyman Carrillo:

I see Speaker Ocegüera in here and wanted clarification.

Assemblyman Atkinson:

Yes. He is a paid firefighter.

Assemblywoman Woodbury:

I had a comment pertaining to Mr. Hammond's remark. Last session, it was brought up that if there was a car accident, law enforcement would check your handheld device to see if you were texting at the time of the incident.

Chair Dondero Loop:

Are there any other questions from the Committee? [There were none.] We will hear testimony in support of A.B. 151.

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

I appreciate the opportunity to come speak on this bill. I come to the Committee not as the Speaker, but as a 20-year-plus emergency services worker. For my full-time job, I am the Assistant Fire Chief. Over the last 24 years, I have been on many calls due to accidents of inattentive drivers: whether that is putting on makeup, eating, or texting. I have witnessed horrific accidents, and for those reasons, I support the bill.

Assemblyman Atkinson:

Could you possibly support something beyond texting?

Assemblyman Ocegüera:

Anything that takes your attention off driving is a problem. I would be supportive of moving the bill further.

Assemblyman Hammond:

The Constitution is weary of enumerating rights. It took a long time for many of those supporters to begin to talk about the Bill of Rights. It is almost impossible to enumerate all of the rights we enjoy as Americans. If you wanted to start enumerating all of the things that could be a distraction while driving, that may cause more concern than anything else. There are many things that could be considered a distraction.

Today, we may consider texting a really bad distraction, which I agree with, but in the future who knows what we will be considering. For me, my children are one of the biggest distractions. I know this sounds silly, but are we going to ban kids from the cars? If we put in some language about distracted driving and what the consequences are, I would be more comfortable with this bill.

Assemblyman Ocegura:

I understand what you are talking about. I am certainly not one of those people who want to regulate everything; however, driving is a privilege, not a right. I am not suggesting that we propose a laundry list to the bill, but Mr. Atkinson was referring to cell phone usage. If he would like to take the bill further with cell phone usage, that makes sense. I would not be supportive of trying to have a laundry list of things you cannot do while driving. We have found cell phone usage, whether it is texting, using the internet, or making a phone call, is not a safe way to drive.

Chair Dondero Loop:

Following that I would like to call up Traci Pearl. Ms. Pearl, you are testifying as neutral, but you are going to give us some background testimony. Is that correct? [Ms. Pearl agreed.]

Traci Pearl, Chief and Highway Safety Coordinator, Office of Traffic Safety, Department of Public Safety:

The mission of the Office of Traffic Safety is to provide funding and expertise to local and government nonprofit state agencies to save lives and reduce injuries on Nevada's roadways. I have combined testimony for Assembly Bill 151 and Assembly Bill 173 into one presentation ([Exhibit E](#)).

The first slide discusses cell phone ownership in the United States; 82 percent of American adults now own a cellular telephone, which is up from 6 percent that owned one in 2004; 75 percent of American teenagers own a cellular telephone. Fifty-eight percent of adults and sixty-six percent of teenagers send or receive text messages with their phone. Usage is up substantially; wireless phone subscriptions have increased 47 percent in the five years from 2005 to 2009. Text messaging alone increased 60 percent in one year from 2008 to 2009. Unfortunately, this aspect of distracted driving is an equal opportunity problem. It is men and women of all ages and all vehicle types.

Our office conducts an annual longitudinal survey of Nevada residents in relation to traffic laws, media campaigns, et cetera. One of the questions we asked in 2010 was whether or not individuals participated in any of the distracted driving behaviors. The top responses ranged from 51 percent talking on the phone

down to 12 percent texting and emailing; these are self-reported from Nevada resident drivers.

There are three types of distraction: visual, mechanical, and cognitive. Assemblyman Atkinson and Assemblyman Hammond have both touched on these. Visual distraction is taking your eyes off the road. Mechanical is when you take your hands off the wheel to do something else. Lastly, cognitive, is where you take your mind off driving. I am sure some of you have driven home from work and once you got into your driveway, you said to yourself, "I do not remember that drive." This is because you were on autopilot and thinking about something else. Text messaging combines all three of these distractions.

There are two studies on distracted driving I would like to point out to you: *Effects of Simulator Practice and Real-World Experience on Cell-phone—Related Driver Distraction* and *A Comparison of the Cell Phone Driver and the Drunk Driver*. Both studies are from the University of Utah Department of Psychology's Applied Cognition Laboratory.

In the first study regarding practice, there were two driving scenarios: highway and city. There were 60 participants; half who use their cell phone about 5 percent of the time, while the other half reported they use their cell phone 41 percent of the time. The objective of the study was to see if after three hours of driving, you could get more proficient at texting and driving and not be as distracted from the first time. Unfortunately, the results were "practice does not make perfect." You cannot practice the distraction away. In regards to the second study on the cell phone and the drunk driver, there were 40 participants; 25 men, 15 women. There was an average of eight years driving experience; 78 percent of those owned a cell phone while 87 percent of those who owned a cell phone admitted to using it while driving. There were four different scenarios the participants had to drive under: undistracted, handheld phone talking, handsfree phone talking, and 0.08 blood alcohol content, which is our legal impaired driving limit.

The results indicated the cognitive distraction. The conversation distracts drivers from the road condition; this is whether it is a handheld or handsfree cell phone. While the type of driver is different, the impairments associated with using a cell phone are as profound as or more so than driving while drunk. The study compared drivers using cell phones and drivers impaired by alcohol. Cell phone users had slower reaction times than drivers with 0.08 blood alcohol content and slower reactions to vehicles braking in front of them.

There is a comparative risk factor. It has also been allotted to drivers using phones. It has been determined that they are four times more likely to get involved in a crash from that distraction. If they are texting, it is 23 times the risk. This is the report from Virginia Tech Transportation Institute that Assemblyman Atkinson referred to. Nationally, in 2008, there were more than 500,000 injuries caused by distracted drivers and 6,000 people killed because of some element of distracted driving. Sixteen percent of fatal crashes involved distracted driving, and the highest proportion of cell phone use involvement were 30- to 39-year-olds—not the novice driver or 20-year-old you would expect. Twenty-one percent of the injury crashes involved distracted driving as well.

The next several slides ([Exhibit E](#)) are in regard to young drivers. One of the senate bills this session is to prohibit texting and driving for those persons under the age of 18. The greatest proportion of distracted drivers is under 20 years old, and the majority of teenagers view texting and driving as less risky than drunken driving. Teenagers are also more likely to say that they use their cell phones more than older people who own cell phones. Drivers under the age of 30 spend 16 percent of their time driving while talking on the phone; drivers ages 30 to 59 spend 7 percent; and drivers over the age of 60 spend 2.5 percent.

Distracted driving is the number one killer of American teenagers. Although graduated driver's licensing laws and longer periods of training have had a substantial impact on the young novice driver, the distracted driving issue with texting and cell phones has kept that rate at the same level. Those types of crashes are increasing, whereas impaired driving, no seat belt use, and speeding are decreasing with this age group.

Almost 90 percent of teenagers know that texting and driving is dangerous, but 53 percent say they are going to do it anyway. Their number one reason that they want to answer their cell phone right away is because their friend is going to get mad at them if they do not answer. I see this all the time, even with adults. There are a lot of technological advances brought forward by insurance companies or national research. In fact, the local news on NBC was talking about a tXtBlocker. It is an application for a cell phone that sends a text while you are driving that says you cannot talk at the moment. In addition, your keypad will not work.

Slides 18, 19, and 20 ([Exhibit E](#)) depict various national maps. Slide 18 shows the eight states in Washington D.C. that have a handheld cell phone ban. Slide 19 shows the 30 states, Washington D.C., and Guam, that have texting bans, and slide 20 shows the young driver cell phone bans. At least half of these

states passed the law in 2010. From 2005 to 2009, you can see the number of injury crashes and fatal crashes caused by distracted driving per year in Nevada. The Fatality Analysis Reporting System (FARS), where we report all of our fatalities on the roadways, has five different elements that could be contributing factors. If distracted driving was the first factor listed, 6.5 percent of those crashes were caused by distracted driving and 4.2 percent of all fatal crashes were caused by distracted driving. If distracted driving is listed as any one of the five elements that caused that crash, it is indicated in 28 percent of our fatal crashes in Nevada.

The last slide shows all of the different sources where we obtained the data I just discussed. I am open to any questions.

Chair Dondero Loop:

Thank you. We are going to go out of order for a moment. I would like Assemblywoman Debbie Smith to testify, and then we will field questions from the Committee.

Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:

We have talked and worked together for months about this issue. Of all the things I have worked on over time, I have never had as much constituent input or reaction as I have had on this bill. Every time I post something or go to a meeting and talk on this issue, I get feedback from constituents about how important it is. The issue of texting and talking while driving has turned into a completely different issue and environment than it was two years ago. We always laugh about what a difference two years can make, but in this case, it is absolutely true. Because Nevada is such an independent state, we do not like a lot of rules and regulations. Sometimes, we are slower in coming to conclusions, but with the amount of texts that are taking place every day, we absolutely know that something has to be done. We are raising an entire generation of young people who do not know any different than to communicate instantly.

A couple of months ago, I attended the Department of Transportation's "TXT L8R" event in Reno. The stories were devastating, and it was certainly compelling evidence that we should not be texting and driving. The event had a course set up where the audience was able to watch young people drive around while texting with a law enforcement officer behind them. It was amazing to see, as well as hear, the piece of information that texting while driving is like closing your eyes for five seconds.

The time has come for this legislative body to act on this issue. I have not had one person say that this is a bad idea. Some people may say it is sad we need

a law for this; we should be able to manage ourselves. The seat belt law has driven people to wear their seat belts, and we know that makes them safer when they wear it. We know that penalties keep people from behaving badly. That is one of the reasons we do not run stop signs and red lights, and we stop at crosswalks.

In addition to safety issues, there are penalties waiting if we are caught breaking the law. That is the important thing about this issue; it will change a course of action in our society. It will help young people as they are growing up and let them know this is not acceptable. It is not an activity that only young people do; we are all crazy about texting, but there is a time and a place. It is time for us to set an example and pass some legislation that deals with it. I am hoping we can work together with the various bills out there on this issue and get something done this session.

Assemblyman Sherwood:

We have a number of these bills coming up. This one is specifically about texting. Are you supporting the bill that would ban texting and leave it at that?

Assemblywoman Smith:

I am open-minded to whatever we can forge in this session because there are a number of different bills and opinions about how far we can go. As I said, Nevada has a different way of thinking about the imposition of these kinds of laws. I am open-minded to how far we can go with this, but I am primarily interested in getting the texting bill passed because it is the most egregious form of communication while driving that is happening.

Assemblyman Sherwood:

Assemblyman Hammond brought up the enumerations of everything that consists of distracted driving. Some numbers were pulled from Las Vegas Metropolitan Police Department, and they issue, on average, 3,840 inattentive driving citations every year. They are already enforcing distracted driving as a bad behavior and issuing tickets for it. So, if we could limit it in scope to just texting for this specific bill and let law enforcement exercise their discretion and continue to issue close to 4,000 citations a year on everything else, that is a winner.

Assemblywoman Smith:

My primary interest was on the texting side. Again, part of this—even if we have distracted driving laws—is changing the culture by having a law that makes it illegal, especially as we have new drivers coming up. New drivers need to know that a particular action is illegal. My original intent is handling texting first.

Assemblyman Sherwood:

I would concur that when you say "this one behavior," it almost waters it down if we start adding to that. As we saw in Traci Pearl's presentation, a person is 23 times more likely to be distracted from texting opposed to anything else. I am with you on that.

Assemblyman Frierson:

In light of the topic of texting versus other inattentive driving, it is worthy to point out that young people do not think texting is inattention.

Assemblywoman Smith:

I agree. That is why there needs to be a law.

Assemblyman Frierson:

Absolutely, and reiterating your point, putting it in a statute raises the point that this is actually inattention. I knew everything when I was 16, but to put it in statute that says "you are distracted even though you do not think you are distracted" is worth distinguishing.

Assemblywoman Smith:

My child and I have had a lot of discussions about this issue. As a parent, I would have appreciated any law dealing with things like this because parents know that if you have the force of law behind you, it really helps. When we were talking about the graduated driver's license, one of my colleagues said to me, "Let the parents do their job." I responded with, "When your child becomes a teenager, you may have a different opinion because you need a lot of tools to help keep your child safe and other people safe based on their behavior." If we can do something about this, it is a good thing for our younger generation as well.

Chair Dondero Loop:

Or as I say, "Until they have walked in our moccasins." Are there any other questions?

Assemblywoman Neal:

My question is for the Department of Public Safety. In your report ([Exhibit E](#)), page 21 discusses the distracted driving crashes. It shows a reduction from 2005 to 2009; it also shows a reduction in fatal crashes in 2007. I am wondering why there was a reduction. Was the reduction based on increased marketing by companies not to text while driving? We are seeing a lot of things in the media, so there is a marketing push that may be reducing that number. It shows eating as a distracted behavior in equal rank to texting. Could you address that?

Traci Pearl:

The year 2006 had the highest recorded fatalities in Nevada at 432. In 2005, our office collaborated with many partnering agencies throughout the state: state agencies, local law enforcement, health organizations, or anyone who had any kind of stake in wanting to reduce traffic fatalities and injuries. We have the Nevada Strategic Highway Safety Plan that was put together by all of those organizations. It was implemented in 2006, and there were many strategies involved in that.

There are five priority areas: impaired driving, occupant protection and seat belt use, pedestrian safety, lane departure, and intersections. This is where we are seeing the biggest problems in traffic safety in Nevada. There are literally hundreds of strategies in those areas. We would like to say it was the implementation of the highway safety plan that reduced the fatalities and injuries, and other people would like to say people were driving less because of the gasoline cost or blame it on the economy. But in 2009, we had the lowest recorded fatalities since we began recording, so we have been making substantial progress.

Assemblywoman Neal:

Would it be fair to say that these "distracted driving crash" numbers do not specifically relate to texting, but they actual relate to other factors? Have you narrowed the scope to texting? Does the number get lower?

Traci Pearl:

That is a very good question. Distracted driving has been indicated and is defined by the fatality analysis reporting system as a myriad of things. It is putting on your makeup, talking to your kids, talking on the cell phone, reading a map, it is operating a GPS system, or anything in relation. The police accident reports for the State of Nevada law enforcement agencies are all standardized. Right now, they have ten elements on their crash report form that have to do with distracted driving. One of those is cell phone use. Currently there is not one for texting. Part of the problem is it is self-reported by the driver. If law enforcement suspects the driver was on his cell phone, they go back and check cell phone records for usage. These numbers are not specific to cell phone use or texting. It is a whole myriad of distracted driving. In those five causations, we found that distracted driving was involved in one way, shape, or form.

Chair Dondero Loop:

Thank you. Are there any other questions from the Committee? [There were none.]

Tony Almaraz, Chief, Nevada Highway Patrol, Department of Public Safety:

Coming from an entity where I have investigated crashes and looked at these kinds of situations for a lot of years, I tell myself, "What more things can we interject to the driver to cause more issues and problems to them?" I know there was one question about how police would enforce these types of violations and how we will see the violations. There are laws about not having open containers in the vehicle, and I am sure that there are people who drive by and have open containers in their vehicle, and we do not see them. What catches our attention is what the drivers do. We make enforcement stops when we see erratic driving caused by eating or texting. There are quite a few citations given, like Assemblyman Sherwood mentioned. We do the same things, but the problem is a lot of the citations we issue do not always have a quantitative reason. From the Department of Public Safety's opinion, the bottom line is anytime you are texting and pulling yourself away from driving, which is a very complex task, it takes your attention away from something you should be doing primarily. All these toys such as stereos, radios, and compact disc players are just another tool to distract driving. For the simplicity of it, driving 65 miles an hour down the road means you are traveling 80 feet per second. That is a long way to go, and a lot can happen in one second on the freeway. I have witnessed a lot of bad things in my career and experience as a law enforcement officer. Anything we can do to enhance the safety of our people is always a good thing. If getting these devices out of the hands of people is the way to get people to focus on driving their vehicle, then that is a good thing.

Assemblywoman Benitez-Thompson:

You were talking about how officers cannot always see the behavior itself, but you can see the result. Would this law allow officers to retrieve cell phone records to see if someone were texting at the time they got pulled over?

Tony Almaraz:

I believe there are a couple of answers to that question. First of all, getting any kind of record is a Fourth Amendment issue that law enforcement would not have access to at the scene if you are going to be writing a citation. In other words, if I saw someone texting, it is my visual observation, almost like a speeding citation. Moreover, officers see the speed on a radar then write it on the citation. This would be the same consequence for texting and driving; you see it, you write it.

The only time we would ever look at seeking the records of someone texting or using a cell phone would be fatality accidents or major injury crashes that involve the death of somebody. Only at that time would we go through a subpoena, which would require going through a court in order to get those

particular records. Again, those incidents are not too often, but usually they are important for the criminal side of the case to show the negligence of the driver. Did you have another question?

Assemblywoman Benitez-Thompson:

I believe you answered my question. It would have to be the officer seeing the activity of texting in order to give a citation. Is that correct?

Tony Almaraz:

That is correct. In regards to swerving on the road and getting pulled over, this could be a result of the texting. Obviously, we do have laws in maintaining travel lanes, and sometimes those are citations we use for distracted driving. It is hard to extrapolate exactly what the driver was doing at the time of being pulled over. There is a whole surfeit of different issues the driver may be going through. The point is we have a device that the driver is looking down at for five seconds, and they have traveled several thousand feet down the road. It is a long way to travel without looking at the road.

Assemblyman Carrillo:

Do the officers go through some type of special training, so they are able to text and drive at the same time? [Laughter.]

Tony Almaraz:

The Department of Public Safety currently has a policy in place that officers are not allowed to text or talk on their phone unless there is a Bluetooth device. It is a written policy already within the department that law enforcement officers cannot text and drive. There is no special training we attend. From the beginning, we train our officers on how to use the radio and listen to what is happening, like emergency calls or other officers that need assistance, and that can sometimes be a multitasking issue. We do not have any kind of electronic devices, but I think you are talking about mobile data terminals; we do have some of those used mostly by our commercial enforcement people. They are usually used at the time of a parked check site.

Assemblyman Hammond:

I keep listening to the testimony, and there is something not sitting well with me. Mrs. Neal mentioned this, and I thought Mrs. Benitez-Thompson was going to hit this. You mentioned that officers look at driving: whether it is sporadic, or the driver's speed is going up or down. I am concerned because if you do not see the driver actually texting, this could be used as a tool to pull somebody over. You can see if an individual is impaired because of alcohol, but if they were texting and you did not see it, what is going to happen? How many people are going to be pulled over that really were not doing anything wrong or

were in fact texting, but you cannot prove anything? I say this because the only time law enforcement pulls up cell phone records is when there is some type of negligence that occurred and officers get the subpoena. I am wondering how many people are going to be pulled over that did not have anything going on in the car?

Tony Almaraz:

Currently, we do not have anything that prevents people from texting while driving. If they are driving a straight line down the road and they are texting, I can drive alongside of them and give them the "do not do that" look. Unless they are actually committing some kind of violation—like drifting outside the lane or going through a stop sign due to the contributing factor of texting—that is the only time we can take action.

The only way I can answer your question at this point is to tell you the motive in this bill is about prevention. We often try to be proactive rather than reactive to these kinds of situations. For example, there might be someone who has been driving for 30 years, drinks and drives all the time, and has gotten away with it. It is that one time that he is going to crash his car and kill somebody that law enforcement thinks about.

What law enforcement is trying to do is put in the mechanisms to prevent a disaster from happening. People like you and I, who are honest working people, use cell phones and take our driving privilege for granted. It is the one time you are going to be looking down for four seconds that a child crosses the street and you run them over that we worry about. Why are we going to open Pandora's box on these kinds of issues? As law enforcement, our job is to support and look at these things as best we can to be preventative; that is our goal.

Assemblyman Hammond:

I completely agree. I know the intent of it and I see it. In college, we talked about gathering intelligence. What you do is figure out the four most logical things that may occur in a given situation. If you are protecting the life of the President, what would be the four easiest things that may occur to put the life of the President in jeopardy? After you eliminate those four, what is the fifth most logical? So you could sit here and try to protect us with all these enumerated things you cannot do in a car, and then there will be another one that comes up, and you keep adding on to the bill. Right now there are a lot of tools to examine the distracted driving element. I will stop there and let you address that.

Tony Almaraz:

I agree with you. There are a lot of tools out there in addition to people out there who are good at driving and texting. My two daughters are my technicians; they set up my cell phone. Aside from that, I cannot get away from the preventative measures of this bill. There are many different types of transportation. I am a pilot, and when you look at flying and the different types of crashes and tragedies that come along with it, it is the one break in the chain that causes these events.

That is where I stand from a law enforcement perspective. We do not want to see that "one time" from anybody. If there is something that deters someone from taking his eyes off the road, and would prevent an injury or affecting a life and someone in his family forever, this is it. With drinking, we have had campaigns for years telling people not to drink and drive. It has been effective in many different ways. There are some that will be ignorant to the idea, and I understand that is what happens in our society. I appreciate your comment as it is a difficult one.

Assemblywoman Neal:

I have two questions. Section 2, subsection 1, paragraph (a) of the bill says, " . . . a person shall not, while operating a motor vehicle . . . engage in . . . Manually typing or entering text into their cell phone" Is operating a vehicle the same thing as pulling over? The car is still running, and the person is texting into his phone. Would this be a violation?

Tony Almaraz:

I suppose if they are pulled over on the side of the road and they are texting, they would not necessarily be operating a vehicle because they are not driving it. That question is forcing me into the territory of DUI laws and what we call actual physical control of a motor vehicle. That is if you have been drinking and the car is running and you are behind the wheel of a car, you are deemed to have been in physical control of that vehicle. There is a clear line between operating the vehicle where you are actually driving the car. If someone is pulled over on the side of the road, law enforcement would look at that as an exception.

Assemblyman Sherwood:

The concern I have echoes that of Assemblyman Hammond. Having lived in New Jersey when profiling was a very big deal, people were getting pulled over for no apparent reason. I wonder about balancing the need to have a deterrent, so we can tell our kids it is against the law. It will get the press. But it may be best if we were to make it a secondary offense, so law enforcement could not pull someone over because they think he is texting. There are a handful of

states that already have this as a secondary offense, including New York. Making this a secondary offense takes the element of profiling out. Would this solve the problem for both sides?

Tony Almaraz:

I respect what you are saying. I do not know if that would really address the problem at hand. My opinion is that making it a secondary offense would not solve the problem. We are right back to looking at other secondary violations, and the question is what are we trying to accomplish here? If it is the safety of people and others around us who have nothing to do with texting at all, we need to look at this bill for them. I am going to disagree with your suggestion, and personally, I have some opposition to it. I do not know if secondary violations for something like this would be the right answer. I certainly understand the global concerns from any kind of profiling. We train our officers not to do that; profiling is against the law.

Chair Dondero Loop:

Thank you. Are there any other questions? [There were none.] There are people waiting to speak in Las Vegas.

Brian LaVoie, representing Hillary LaVoie Effort:

I represent my wife and the three surviving siblings of my daughter, Hillary LaVoie. Hillary LaVoie was killed as a passenger in a single car crash on September 26, only 18 days after her 18th birthday. The three girls in this vehicle were not doing drugs or alcohol. All three of the girls were honor students and attending college. My daughter was a millennium scholarship recipient. Hillary was a four-year member and captain of the cheer squad, a four-year member of student government, and the homecoming queen. I tell you this because these three children were good girls, and they followed the rules. If there was a rule in place to not have a cell phone in hand while driving, and to not have distracted driving, this crash could have been prevented and my daughter would be with us today. I urge you to pass this bill because my wife and I now belong to a club that none of you want to belong to because the cost of admission is way too high.

Chair Dondero Loop:

I am sorry for your loss. Mrs. LaVoie, did you want to speak?

Tina LaVoie, representing Hillary LaVoie Effort:

I would like to add something. I trust Nevada to do the right thing and protect our children and to protect those with the most life to lose. We heard testimony that the fatality rate has gone down, but if your child, friend, or family member is one of those who lost their life, we need to do something to

protect them. If there was a law in place, the law would have been followed. It is about prevention; it is about telling people that you can get in trouble for doing this. Follow the law and obey the rules because you do not want to be sitting on our side. I trust Nevada to make this happen and do what we have to do to protect our children. I trust our voters to stand up and say, "Yes, we will support this bill."

Sandy Watkins, Private Citizen, Las Vegas, Nevada:

I am here with my daughter-in-law, Jenifer Watkins. We support this bill, but in addition to texting, talking on the cell phone while driving should be included. The woman who hit my son and Jenifer was talking on her cell phone. We need to protect families from going through what we have been through. To be honest, their crash almost gave me a nervous breakdown. To this day, I still get teary. No one should have to see their children suffer through so much pain or witness their children with painful injuries and lifelong disabilities that will never go away. Lives are shattered and changed forever unnecessarily.

Chair Dondero Loop:

Were you wanting us to follow with your presentation here in Carson City?

Sandy Watkins:

Yes. I believe you have my testimony in writing ([Exhibit F](#)). There are also photographs ([Exhibit G](#)) and a video ([Exhibit H](#)) we would like you to see.

Chair Dondero Loop:

Yes. We will show the video here. [The Watkins' video and photographs were presented to the Committee.]

Sandy Watkins:

Again, talking on the cell phone needs to be included in this bill. The woman who hit my children was so distracted by her conversation on her cell phone that she did not even see their car and hit them at 75 miles per hour. We did not think Jenifer was going to live. She had such a struggle. Jennifer is now 27 years old and is disabled. People say, "You are going to take my rights away." Like stated before, driving is a privilege, not a right. No one has the right to talk or text on the phone while driving and do this to someone. Accidents like this not only affect the victims but their families as well. All of us need to protect our people and make this a primary law to save lives and prevent injuries.

Jenifer Watkins, Private Citizen, Las Vegas, Nevada:

I just wanted to say that a lot of people think they can multitask while driving, and you simply cannot. I do not want anybody to go through what I did. I had

to take two years out of my life to learn how to do everything over again. Like Sandy stated, the doctors did not think I was going to make it through the night. At the time the crash occurred, my husband and I were only married for nine months. We celebrated our first wedding anniversary while I was in a wheelchair. I worked really hard to get where I am today. People look at me and do not think I am disabled, but they do not know what I have been through the last several years of my life; it is never going to be the same. It is something I have to put up with the rest of my life. Hopefully, we can get this bill passed. Whether the law is talking or texting while driving—it should be banned completely—no matter the age.

Assemblywoman Benitez-Thompson:

I wanted to thank you all for testifying. I know that we can get caught up in the semantics and the language of the bill, and we could come up with a million different reasons why we should not put it out there, but we have heard some convincing testimony in the past minutes about why we need this and why all of these preventative measures would be important. I want to thank you for that perspective.

Chair Dondero Loop:

Thank you for your testimony. I know this has been hard. Ms. Watkins?

Sandy Watkins:

I wanted to thank you for giving us the opportunity to testify in hopes of getting this law passed.

Patrick Moers, Captain, Police Department, City of Henderson:

I have been serving with the City of Henderson Police Department since 1991. Assembly Bill 151 and Assembly Bill 173 propose to make changes concerning the use of cellular telephones or other handheld wireless communication devices while operating a motor vehicle. More specifically, it focuses on the nonvoice communication and increased penalties. The City of Henderson has averaged 2,900 traffic accidents over the last three years. Of those, distracted driving was the third leading cause at 13 percent, following too close was 20 percent, and the leading cause was failing to yield at 25 percent. [Continued to read from prepared testimony ([Exhibit I](#)).]

Madam Chair, the City of Henderson supports the spirit of A.B. 151 but has some concerns regarding the proposed penalties of this law. We appreciate the Committee's consideration of our concerns, and we are happy to work with the bill sponsor on specific language.

Assemblywoman Diaz:

I am hearing that you have some concerns regarding the penalties that are associated with the proposal of this bill. What do you think appropriate penalties are? You allude to aggressive and reckless driving, but there is nothing in your testimony saying what law enforcement would recommend to be better.

Patrick Moers:

Those statutes have specific progressive-type actions in them, whereas this statute says that on the third or subsequent offense in a seven-year period, which is a very long period, a person is still guilty of a gross misdemeanor. You could be jailed for one year with offenders of other serious violations because you were talking on your cell phone. This in no way portrays cell phone usage as a bad thing. We absolutely think anything to reduce traffic fatalities and injuries is appropriate. The provision in this bill does not have anything about progressive fines, mandatory training classes or driver education classes, or suspension of driver's licenses, if we deem this to be similar to those other leading causes. Aggressive driving and reckless driving are just willful disregard by people who go out of their way to commit deliberate acts, and yet, those have more progressive actions in them than this bill does.

Assemblywoman Diaz:

Is there any way that you might submit some language for an amendment if you are not content with what the bill is saying in order for us to consider what you may be happy with?

Patrick Moers:

We would be more than happy to submit language. Again, we also voice our concern with the nonvoice communication with this bill. We think it should be expanded farther.

Assemblyman Frierson:

My question is regarding potential classes. Are there classes that exist that could be ordered? My understanding is it would be within the purview of the judge to order that even if it was not required. If there were a course or video, it would be something important for people caught texting and driving to watch. I do not know if that exists at this point.

Patrick Moers:

Yes. There are no specific classes gauged toward distracted driving. Those classes are the same classes you would get for going to traffic school for a speeding violation or any other traffic violation. It is only an effort to take

points off somebody's driving license privilege. I should have clarified that before.

One of the things you mentioned was the judge being able to enforce that. This bill does have the capability to make it a gross misdemeanor, but no judge would want to put somebody in jail for talking on a cell phone in today's society and burden the prison system or make the individual have probation officers for a traffic violation. This would be a challenge.

Capri Barnes, Cofounder, Friends That Click Together Stick Together, The Monica Mapile Foundation:

I represent myself, my partner, and our organization, Friends That Click Together Stick Together. I am a 19-year-old teenager. I felt that it was very pertinent that I come and give my support to this bill because I am a teenager. As was said earlier, teenagers can do anything to outsmart the police because it is what we do. We live to deter our parent's attention, to outsmart police officers, to trick our teachers, and to do everything we can to assume the right position. I can tell you our organization was created because my best friend died in a car accident. Although she was not distracted, the terms of her accident are very hard to view. I support this bill simply because teenagers, and humans in general, need only pay attention to the road and ourselves, not any other distractions, especially cell phones and texting.

Kathleen Young, Private Citizen, Reno, Nevada:

I am here because I am not only in favor of this bill, but I need to see that there will be another attachment added to this bill. I want the next generation of technology added to this bill, which includes laptops. Motorola Mobility, Inc. is now coming up with a new generation of cell phones that can attach to a laptop or an iPad. Both can be utilized while driving.

The reason I am in support of this bill is because my son was killed on U.S. Highway 395 on September 17, 2010. My son was killed by an 18-year-old distracted driver who was more concerned about his laptop and whether or not it was working. He was not concerned about the person he had initially hit before hitting my son. This behavior must stop. We need to take action and make sure this does not happen to another family like mine. This testimony I wrote ([Exhibit J](#)) was the hardest thing I have ever done in my entire life.

Chair Dondero Loop:

I am sorry for your loss. Are there any questions or concerns from the Committee? [There were none.]

A. J. Delap, Government Liaison, Metropolitan Police Department, City of Las Vegas:

You have heard extensive information presented to you today. Las Vegas Metropolitan Police Department is in support of this bill. We think it is a growing issue and one of great concern to us. We would like another tool that we can use to protect the citizens of our valley. We have spoke with Assemblyman Atkinson about this bill and submitted an amendment under Nevada Sheriffs' & Chiefs' Association ([Exhibit K](#)), which we also represent. The amendment deals with the law enforcement officers using a text messaging device or cell phone device during the course of their duties. We have also spoken with Assemblyman Atkinson regarding some concerns of ours with the gross misdemeanor which Captain Moers addressed as well. It is a big concern of ours; we are very interested in this bill. On a personal level as an officer that has been on the street for 14 years, my number one concern for my family is that they are going to be injured in a car accident: not a victim of a violent crime, whether that be a robbery or invasion. I would like that thought to sink in for the Committee.

Assemblywoman Diaz:

Just like I asked Captain Moers, does Metro have any amendment or any language you would recommend for the penalties for texting or using the cell phone while driving if we decide to include that as well?

A. J. Delap:

At this point, we do not. Assemblyman Atkinson indicated that he was open to that. As a collective body, we would like both Nevada Sheriffs' and Chiefs' Association as well as Henderson Police Department, and any other agencies that are interested in this, to have a brief conversation about that and find out what resources are available. Then we can follow up with Assemblyman Frierson's question about what would be best suited for this. We can do that quickly and will certainly have an amendment for the Committee in a timely matter.

Assemblyman Hammond:

Do you know which state has had this no texting law on the books the longest? Do you have any doubt to how significantly the number of distracted driving accidents has gone down? I know Assemblyman Atkinson referred to several studies; I have not seen any of those, but I was wondering if you could enlighten me.

A. J. Delap:

I do not have those numbers. I was impressed with the Department of Public Safety's numbers presented this afternoon; they would probably be able to better answer that question.

From Metro's perspective, it is difficult to address the issue of distracted driving because it is one of those things we only investigate or pursue when there are significant bodily injuries or fatalities involved. Under those circumstances, our detectives will pursue a search warrant and a subpoena for those records to try to determine if distracted driving was or was not an issue in the fatality. That is our method. As far as quantitative data from our jurisdiction, we do not have that, and at this point, there is not a mechanism to use to verify that.

Assemblyman Sherwood:

Along similar lines, we have the seat belt law, which has also been on the books for a while. I cannot help but see the comparisons in the two. I wonder if you could speak to the way of change and behavior back when we enacted the seat belt law and what result that had.

A. J. Delap:

I am glad you asked that question. From law enforcement's perspective, the difference is whether or not wearing your seat belt could have a fiscal effect on us publically, but it does not determine whether or not you are going to pay attention, run through a four-way stop, and hit a vehicle that was legally crossing through the intersection. The seat belt law does nothing for that; however, distracted driving does. It allows officers the opportunity to be proactive and prevent that from occurring. As an agency, we would pursue this law as being a primary offense and not as a secondary offense.

Cheryl Blomstrom, representing Nevada Motor Transport Association:

We are in support of Assemblyman Atkinson's effort to make our roads safer. The best outcome for our employees and for the motoring public is to move goods efficiently, effectively, and safely from point to point and to send us all home safely. [Submitted an amendment ([Exhibit L](#)) on behalf of Paul Enos.]

Brian McAnallen, Director, Legislative Affairs, CenturyLink:

I have been asked to make comments on behalf of Judy Stokey at NV Energy and Debra Gallo with Southwest Gas. I believe Judy Stokey provided the Committee with an amendment for both bills ([Exhibit M](#)). This amendment is both important and necessary. It simply says that in addition to emergency vehicles we would seek an exemption for "radios and handheld devices in work vehicles of utilities that are regulated in the State of Nevada."

The reason we are seeking this clarification goes along with what Assemblywoman Neal asked earlier with regard to operating a vehicle and how whether or not you are pulled over and using a cell phone device would impact this law. All of our vehicles and our technical crew at CenturyLink and at NV Energy have handheld devices; it is how we are able to dispatch them to be able to repair all necessary work. Coincidentally, all of the utilities function in the right-of-way and usually in lanes of traffic. Often, our vehicles are pulled to the side with a purpose and function of their regular duties to repair ground or aerial utility lines. It would be necessary in order to communicate with our staff. In CenturyLink's case, we also have laptops that are attached to the dashboard, and we use the handheld device to dispatch to a particular location.

We enforce some severe guidelines while providing significant training for all of our technicians. They use Bluetooth devices with a handheld apparatus for the phone calls, but they are to be pulled over when they are responding to text messages and using the laptops at locations. They have to report back to our main center of operations when they are out in the field doing work.

We think this simple exemption would clarify the issues that relate to our employees. We look forward to working with the bill sponsor. If we can get this language within the bill, we will be supportive. We know it is an important issue and do not want to stand in the way; we just need to figure out how to address our employees.

Assemblywoman Diaz:

When the employees of these companies go out to service and have all this technology attached to them, are they doing it while operating vehicles or are they pulling to the side of the road to do it?

Brian McAnallen:

Our employees are getting a phone call while on the Bluetooth device in order to receive a message and know locations to go to, but then they pull to the side of the road when they are at the location and responding to those things. The challenge is that our employees are actually functioning in the right-of-way on the road. As they pull to the side, there could be challenges. We are concerned about other people, for example, contacting the police and saying, "Somebody in this utility vehicle is talking on the phone on the side of the road." I think this will clarify our concerns. I hope that answers your question.

Michael Geeser, representing AAA Nevada:

The company AAA Nevada supports this bill. [Submitted [Exhibit N.](#)] We appreciate the sponsor for bringing this forward. We believe it is badly needed because of what is called "eyes off the road" distraction: physically

looking away from the road when you are driving. This behavior significantly impairs several critical aspects of driving performance including reaction time, ability to maintain proper lane position, and capacity to steer appropriately. For those reasons, we support the bill. We also believe that the bill encompasses all of the people who are involved and responding to the scene of an accident from the moment it happens, whether it is our industry in tow trucks, whether it is law enforcement who is responding, or emergency medical technicians. The bill seems to have enough exclusions to cover everybody to render health and safety to the motorists of our state.

Assemblyman Sherwood:

If we pass this bill, will insurance rates go down?

Michael Geeser:

That is the question we get asked on every bill. The answer is the same. There is nobody who can tell you insurance rates will go down for one specific reason or 100 reasons. I will tell you that if this bill is passed, it will make the roads of Nevada safer. If we can make the roads of Nevada safer—and if that means lowering insurance rates because we do not have as many claims—that is great. This bill gets us in the right place to make motoring safer in the state.

John Griffin, representing Sprint:

In previous sessions we have watched, and not necessarily participated in, a number of texting bills and seen them go through various problems and issues. This is the first texting bill in Nevada that Sprint is testifying in support of. Most of the credit for that goes to the former Chairman of this Committee and that Chairman's experience and expertise on the subject through the years, which, in Sprint's opinion, has produced a very good bill. I want to point out one issue, and I may need potential clarification with legal.

Under *Nevada Revised Statutes* (NRS) 484A.400 is a requirement that attempts to make traffic laws uniform across the state and preempts a lot of local ordinances that would differ from the state law. We would bring that to the Committee's attention so that if and when this bill passes, the preemptive language is intact so that other jurisdictions, counties, or cities do not do different things on texting or handsfree devices. The key component with texting and all of these issues is educating and changing driver behavior. The more uniform the law is, the better educated the drivers are, and the less confusion there is with discrepancies between handsfree in Carson City, but no texting in Reno. Uniform laws are the best at educating and changing driver behavior.

Chair Dondero Loop:

Mr. Griffin, did you say that you had an amendment?

John Griffin:

I said I do not think it requires an amendment. It does however require a clarification from legal that the preemption contained in NRS 484A.400 would apply to this bill.

Assemblyman Atkinson:

I believe, and Darcy Johnson can clarify this, it is obvious to think the question is if a state law like this passes, will counties or cities be able to supersede that law and put their own thing in? I believe state law supersedes. Is that correct?

Chair Dondero Loop:

I think so. Ms. Johnson? You are the expert.

Darcy Johnson, Committee Counsel:

That is correct. Under Dillon's Rule, the state preempts the local.

Chair Dondero Loop:

Thank you.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association:

From the medical and health care point of view, the studies about the impact of cell phone use now go back about ten years. The difference between this and other aspects of distraction and driving has been that the studies in the public health field almost immediately rose to the level of the proven impact of intoxication on driving. It is the only one of the various behaviors that has reached that. Within the last three years of study, texting has actually surpassed intoxication in terms of the physical responses as well as the level of the impact on society. For those reasons both the public health community and emergency room physicians have had a considerable concern about the impact of the use of cell phones in driving situations.

From our perspective, we would support A.B. 151 to the furthest the Committee feels comfortable in processing the bill. We have looked at the five pieces of legislation that have been proposed and would suggest the Committee begin picking at the various bills. Each bill has a slightly different focus in terms of covering the texting issue as well as the handsfree device issue: Is it aimed at a particular target group—youth or general? What are the punishments, and exemptions? What are the circumstances under which the behaviors are trying to be restricted?

We did a comparison of the five bills on these matters ([Exhibit O](#)). We encourage you to process something to move Nevada onto responding to this problem. It took a long time for Nevada to put in laws about intoxication and driving. It took well past when the science proved it, well past the anecdotes of the horror stories when families proved it, and well past when the emergency departments were responding to it. Let us not wait that long with what is already scientifically proven, as well as proven in health care systems.

Chair Dondero Loop:

Are there any questions from the Committee?

Assemblyman Sherwood:

When you have done the studies, is texting far more distracting than eating, putting on makeup, changing the radio station, or talking to your kids? If you did a hierarchy, is it number one? Is that what you have concluded?

Lawrence Matheis:

When you compare it to intoxication, which is the standard where we know we have to intervene, yes, it is number one at this point. All of the studies that you have from the Department of Public Safety, that it is the greatest distraction. It is also very much focused in a particular age group. The younger people tend to be the ones doing it more often and more dangerously. The use of cell phones or handheld devices are at and above the level of the result of intoxication and driving as well. There is a magnitude of the issue; neither is a safe behavior, but a dangerous one instead.

David Goldwater, representing Google, Inc.:

Thank you for debating this important piece of public policy. I am here representing a special project for a company called Google. That project is a self-driving automobile. We are in support of A.B. 151. We support any and all efforts to make driving safer and lower the rates of injury and death in automobiles. [Continued to read prepared testimony ([Exhibit P](#)).]

Chair Dondero Loop:

Thank you. Are there any questions? [There were none.] Last, in support, is Mr. Reed from Department of Corrections.

Rex Reed, Ph.D., Administrator, Offender Management Division, Department of Corrections:

I meant to check neutral. Mrs. Reed is the Chief of Fiscal Services, and I learned a long time ago to defer to the person who signs checks, so I will defer to her.

Deborah L. Byberg-Reed, Chief, Fiscal Services, Department of Corrections:

We are here today to amend our fiscal note to A.B. 151 ([Exhibit Q](#)). I cannot tell you how it happened when we did it originally, but we are correcting it downward to reflect the incremental costs instead of the average cost per inmate. Therefore, we believe the fiscal note for fiscal year (FY) 2011 and FY 2012 will be \$6,650. For FY 2012 and FY 2013, the fiscal note will be \$28,156. The effect on future biennia is \$113,505. It is a significant downward fiscal note, and we felt it important that the Committee know there was not so much an error made, but a difference in logic.

Chair Dondero Loop:

I think we are done with those who are in support of the bill. Any of those opposing?

Tierra D. Jones, representing Clark County Public Defender's Office:

We are opposed to this bill because we share some of the similar concerns that have been expressed by members of the Committee. We believe if this bill was passed, it would open up opportunities for people to be pulled over because law enforcement may believe they are texting, when in reality, they are not. Somebody may be looking down at something or changing the radio station. If it is perceived that those behaviors may be texting, then people may be pulled over. If someone is driving down the street and texting, and this is visible, law enforcement already has the ability to stop these individuals for inattentive driving or stop them for suspicion of reckless driving, and they can pull these people over and investigate whether or not texting was involved.

We also had some concerns with the penalties, which has already been addressed with discussion of possible amendments. We would like to state, for the record, it is not our position that absolutely nothing should be done and people should be allowed to freely text and drive. We believe that accidents are a completely different story, but there are mechanisms currently in place if somebody is seen texting or distracted driving.

Orrin J. H. Johnson, Deputy Public Defender, Washoe County:

We agree and concur with Ms. Jones' statements. There are a couple things I want to add. Today while driving on U.S. Highway 395, I noticed a woman driving beside me who was texting with her cellular device above her lap and in front of her. She was shifting back and forth between about 50 and 60 miles per hour: both faster and slower than I was going. She cut in front of me at one point. I thought of today's hearing, and I was absolutely maddened there was no police officer at that moment to pull her over, which could have been done under existing law for failure to exercise due care, inattentive driving, or

careless driving. There is a host of other things she could have and should have been pulled over for because at that moment she was a danger on the road.

We can concur with what Assemblyman Hammond said. Once we try to enumerate every single thing that constitutes distracted driving, especially things that are taking place inside the vehicle that may be difficult to see, we start opening the door to police officers being able to pull people over. It is not necessarily through any malicious intent, although that is always a fear, but it is increasing the amount of times that police are negatively interacting with the citizenry, whether people are doing anything wrong or not. For those reasons, we oppose the bill. As Ms. Jones said, we certainly do not take the position that texting while driving is a good thing. We just think the existing tools are enough without going to a new level where people are more likely to be pulled over without necessarily having broken the law or done anything wrong.

Assemblyman Sherwood:

You see the value of putting this out there and letting all the parents tell their kids, "This is against the law." They do not have to explain it is a secondary offense or primary offense; they can simply say it is against the law, and sometimes that is the best press release you can have. The best media campaign is a law. If it were passed as a secondary offense so that we could not profile—and this does happen—would you feel more comfortable with the bill?

Tierra Jones:

We would feel more comfortable if it were a secondary offense because that would eliminate the possibility of any type of profiling or anyone being pulled over for the wrong circumstances.

Orrin Johnson:

We concur with that as well.

Assemblyman Atkinson:

Are you indicating that if we change the bill to a secondary offense, both the public defender's offices in the north and south will sign on?

Tierra Jones:

We would no longer have a problem if this was a secondary offense.

Assemblyman Atkinson:

Is the major issue about profiling? There were a couple of bills in this house last year that dealt with texting that had to do with age, and I was not supportive of those because I, as an African-American male, felt it would lead to profiling.

Is profiling your major concern? I have not heard either of you talk about public safety.

Tierra Jones:

Profiling is a concern of ours; it is not the entire concern we have with this bill. Our entire concern is people being pulled over for a number of reasons that may be suspected as texting.

Assemblyman Atkinson:

I recognize the other distractions, but we have numerous studies that have been conducted on this, and I will call your attention to page 22 of the Department of Public Safety presentation ([Exhibit E](#)). If you have seen any of these statistics, texting and cell phone use far outweigh putting on makeup or any of the other things mentioned. You are saying you are not supportive in reducing one barrier—the biggest barrier—to distracted drivers. I do not see it that way, but I see it as something that should be disallowed. Do you not see a need to remove the number one barrier that may be causing accidents, causing fatalities, or injuring people unnecessarily?

Orrin Johnson:

We disagree that it is a necessary barrier; that is why we say, under existing law, the tools already exist to pull somebody over that is obviously texting. I respectfully disagree; we do not see that as a barrier. In response to an earlier question, yes, depending on how the language ultimately came out—if it was a secondary offense—I do not anticipate opposing it.

In terms of public safety, we are concerned. We drive on the roads, I have a daughter, and she drives on those roads too, so of course we care about public safety. We also understand, since the beginning of the republic, that public safety and individual liberty is always something that is in balance and something we need to carefully consider. Any kind of illegitimate stop while driving down the road is one of the areas—not just with racial profiling—in that it creates tension between the government and the people.

Chair Dondero Loop:

Mr. Johnson, please keep your comments to the bill. Are there any other questions?

Assemblyman Frierson:

I have some concerns about the argument that there are other reasons why people can currently be pulled over for being distracted while simultaneously arguing against language that allows law enforcement to do what you are acknowledging that they already can do. There was a scenario brought up with

some other reasons why somebody could be pulled over: maybe someone was looking in her purse. Is not the alternative when that happens to let the person go?

Orrin Johnson:

Certainly it is, but the stop has already occurred. The detention has already taken place, so there is already a slight negative impact. Again, we would submit that the current tools are enough where the texting is obvious. However, if it is going to be a secondary offense, that may be the compromising way to go.

Assemblyman Frierson:

In previous sessions, there were other bills where concerns were raised about proposals offered to set forth no additional investigations for stopping somebody. I see the opposition without an acknowledgement of how dangerous the subject conduct is. I would encourage you to put some thought into that and maybe consider speaking with the sponsor of the bill along those lines.

I also wanted to distinguish between seat belts and text messaging. When we are talking about profiling, which I take seriously, if somebody looks at a car and decides to pull it over for some reason other than the actual claim like text messaging, it seems there is a substantial risk. For example, if someone is pulled over for using his cell phone and he does not have a cell phone, we have a problem. Whereas with a seat belt, we all have seat belts, so there seems to me to be a distinction between something like seat belts and cell phones. Am I off-base?

Orrin Johnson:

I would suggest that in most cases cell phones are nearly as ubiquitous within a modern vehicle in the year 2011 as a seat belt is; although not everybody will have one. If someone is pulled over and it turns out there was no cell phone, there is no remedy unless there is subsequent arrest. Even then, it is to toss out some evidence. We certainly see some concerns there as well.

Chair Dondero Loop:

Committee members, there were two individuals who provided written testimony for both A.B. 151 and Assembly Bill 173. They ask their testimony ([Exhibit R](#) and [Exhibit S](#)) be entered into the record as they were unable to attend today's meeting. These individuals are Don Carlson and Billy Smith, Jr. from the Amateur Radio Emergency Service. Is there anyone neutral, or anyone else opposing the bill? [There was none.] We will close the hearing on A.B. 151, and we will open the hearing on Assembly Bill 173.

Assembly Bill 173: Prohibits the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle in certain circumstances. (BDR 43-104)

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6:

I want to propose something ([Exhibit T](#)), and I have a request. I have listened to all the testimony and those opposed proponents. My bill is very similar to Assemblyman Atkinson's. I was wondering if you would be in favor of me amending this bill over to Mr. Atkinson. I spoke briefly with him prior to this presentation, but I wanted to sit down with him and see where we could cosponsor and come together on this bill. I would like to amend A.B. 173 to him. There is only one difference in the bill, and that is handheld devices.

Chair Dondero Loop:

I would respectfully request that you and Mr. Atkinson get together and include legal.

Assemblyman Atkinson:

I will agree, and I am sure we can combine or amend your language into Assembly Bill 151 since it is not up for a vote today. I am in favor of amending your name onto the bill as well.

Chair Dondero Loop:

I will repeat my initial comment. I would like Mr. Munford and Mr. Atkinson to both get with legal and amend the bill. We will close the hearing on A.B. 173. Is there any public comment? [There was none.]

Meeting is adjourned [at 5:40 p.m.].

RESPECTFULLY SUBMITTED:

Janel Davis
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn Dondero Loop, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: March 8, 2011

Time of Meeting: 3:19 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 151	C	Assemblyman Kelvin D. Atkinson	Written Testimony
	D	Assemblyman Kelvin D. Atkinson	NCSL Cell Phone Use and Texting While Driving Laws
A.B.151 and A.B. 173	E	Traci Pearl	NDPS PowerPoint Presentation
A.B.151 and A.B. 173	F	Sandy Watkins	Letter to Legislators
A.B.151 and A.B. 173	G	Sandy Watkins	Photographs
A.B.151 and A.B. 173	H	Sandy Watkins	Video
A.B.151 and A.B. 173	I	Patrick Moers	Written Testimony
A.B. 151	J	Kathleen Young	Written Testimony
A.B. 151	K	A. J. Delap	Proposed Amendment
A.B. 173	L	Cheryl Blomstrom	Proposed Amendment by Paul Enos
A.B.151 and A.B. 173	M	Brian McAnallen	Proposed Amendment by Judy Stokey
A.B. 151	N	Michael Geeser	Written Testimony
A.B.151 and A.B. 173	O	Lawrence P. Matheis	Comparison of Measures
A.B. 151	P	David Goldwater	Written Testimony
A.B. 151	Q	Deborah Reed	Revised Fiscal Note Calculation
A.B.151 and A.B. 173	R	Don Carlson	Written Testimony and Proposed Amendment
A.B.151 and A.B. 173	S	Billy Smith	Letter in support of Don Carlson Amendment
A.B. 173	T	Assemblyman Harvey Munford	Written Testimony and Proposed Amendment