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Revised

House Bill 1212
Judiciary

(Delegate Clippinger, *et al.*)

Judicial Proceedings

Use of Text Messaging Device or Handheld Telephone While Driving - Accidents
Resulting in Death or Serious Injury - Penalties

This bill creates a new offense to prohibit the unlawful use of a handheld telephone or writing, sending, or reading a text message or electronic mail while driving in such a way that causes an accident that directly results in the death or serious bodily injury of another. If a person commits this offense, the Motor Vehicle Administration (MVA) must assess 12 points against the driver's license. A violator is guilty of a misdemeanor and is subject to imprisonment for up to one year and/or a maximum fine of \$5,000. A sentence imposed under the bill must be separate from and concurrent with a sentence for another crime based in whole or part on the act establishing the violation of the offense created by the bill.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues as a result of the bill's monetary penalty provision from cases heard in the District Court. General fund revenues increase minimally due to additional administrative hearings. Minimal increase in Transportation Trust Fund (TTF) revenues to the extent drivers with revoked licenses apply for reinstatement and receive corrected licenses. Minimal increase in TTF expenditures for MVA due to additional administrative hearings. It is expected that the Office of Administrative Hearings can handle additional hearings resulting from the bill with existing resources. General fund expenditures increase minimally due to the bill's incarceration provisions.

Local Effect: Potential significant increase in revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: After conviction of an offense under the Maryland Vehicle Law, State or local traffic regulations, or specified vehicular manslaughter or homicide offenses, State law has established a system of points to be assessed against the driver's license. For points accumulated within a two-year period, MVA must impose certain sanctions. The specific offenses and the points to be assessed are set forth in statute. For the accumulation of 12 points, MVA must issue a notice of license revocation.

“Serious bodily injury” means an injury that (1) creates a substantial risk of death; (2) causes serious permanent or protracted disfigurement; (3) causes serious permanent or protracted loss of the function of a body part, organ, or mental faculty; or (4) causes serious permanent or protracted impairment of the function of any bodily member or organ.

The term “life-threatening injury” is not defined in State law.

Handheld Phones: A “handheld telephone” means a handheld device used to access a wireless telephone service. The driver of a school vehicle that is carrying passengers and is in motion is prohibited from using a handheld telephone. The prohibition against using a handheld telephone applies to the holder of a learner's instructional permit or provisional driver's license who is age 18 or older. Any other adult driver of a motor vehicle that is in motion may only use the driver's hands to initiate or terminate a wireless telephone call or to turn the handheld telephone on or off; otherwise, the driver may not use a handheld telephone. These prohibitions do not apply to the emergency use of a handheld telephone, including calls to a 9-1-1 system, hospital, ambulance service provider, fire department, law enforcement agency, or first aid squad. These prohibitions also do not apply to law enforcement or emergency personnel when acting within the scope of official duty, the use of a handheld telephone as a text messaging device, or the use of push-to-talk technology by a commercial operator.

Texting Devices: A “text messaging device” means a handheld device to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network. A wireless communication device means a handheld or hands-free device used to access a wireless telephone service or a text messaging device. Under the universal ban on texting while driving, a driver is prohibited from using a text messaging device to read, write, or send a text or electronic message while operating a motor vehicle in the travel portion of the roadway. A violator is guilty of a misdemeanor and subject to a maximum fine of \$500. The prohibition does

not apply to the use of a global positioning system or the use of a text messaging device to contact a 9-1-1 system. A violator is subject to an assessment of one point against the driving record. The prepayment penalty assessed by the District Court is \$70, or \$110 and three points if the violation contributes to an accident.

Background: For more information about distracted driving in Maryland and other states please see the following **Appendix – Distracted Driving**.

State and Local Fiscal Effect: MVA reports that, for the five-year period from 2008 through 2012 (the latest data available), there was an average of 53,878 traffic crashes involving at least one distracted driver. The average number of crashes with fatalities was 229 and the average number of distracted crashes with injuries was 19,790 during that same period. For the number of crashes with injuries, *for purposes of this illustration*, assume the number of crashes with serious bodily injuries is 25% (or 4,948) of the total number of distracted driving crashes with injuries and that 10% of those crashes (or about 495) involved a driver using a handheld telephone or texting unlawfully and meeting the direct causation threshold established in the bill. Accordingly, for the total number of crashes, this estimate assumes that 10% of the distracted drivers (or about 518) that were involved in crashes with fatalities or serious bodily injuries were using a handheld telephone or texting device unlawfully at the time of the crash, and directly caused the serious injuries or fatalities as a result of the traffic accident.

For illustrative purposes only, if each driver from an estimated 518 distracted driving crashes with fatalities or serious bodily injuries were charged with using a handheld telephone or texting and directly causing a serious or fatal traffic accident, in violation of the bill, and received, from either the District Court or the circuit courts, the maximum fine of \$5,000, annual revenues could total as much as \$2.6 million. If half of those cases were heard in the District Court and the other half were heard in the circuit courts, general fund revenues could increase by \$971,250 in fiscal 2015 and as much as \$1.3 million on an annual basis. Local revenues could increase in fiscal 2015 and out-years by the same amounts.

However, the revenue attained by the State or local governments depends on the venue to which cases are assigned, as the District Court and the circuit courts have concurrent jurisdiction over this offense. It also depends on the extent to which drivers are charged with the offense and actually receive the maximum fine. Some undetermined number of violators could receive incarceration in lieu of or with a lesser fine penalty.

State Revenues: General fund revenues increase, potentially significantly, as a result of the bill's monetary penalty provision from cases heard in the District Court.

General fund revenues increase minimally to the extent that those drivers subject to license revocation request and pay for an administrative hearing. The filing fee for an administrative appeal is \$150. *For illustrative purposes only*, if 25% of 518 drivers with revoked licenses request an administrative hearing, general fund revenues could increase by as much as \$14,625 in fiscal 2015 and \$19,500 annually.

TTF revenues increase minimally in fiscal 2015 and in future years to the extent MVA revokes driver's licenses as required by the bill and drivers request reinstatement and corrected licenses. The fee for a corrected license after reinstatement of a revoked driver's license is \$45. *For illustrative purposes only*, if 518 drivers had their licenses revoked and all requested reinstatement, TTF revenues could increase negligibly in fiscal 2015 (due to the delayed impact of license reinstatements) and by as much as \$23,310 on an annual basis.

State Expenditures: TTF expenditures for MVA increase minimally to the extent that drivers charged with this offense request administrative hearings. MVA reimburses the Office of Administrative Hearings about \$100 per appeal. *For illustrative purposes only*, if 130 drivers had administrative appeals, TTF expenditures increase by as much as \$9,750 in fiscal 2015 and as much as \$13,000 on an annual basis.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime and sentenced to incarceration is expected to be minimal.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase, potentially significantly, as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 348 (Senator Manno) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, The Wireless Association, National Highway Traffic Safety Administration, National Transportation Safety Board, Governors Highway Safety Association, Highway Loss Data Institute, Insurance Institute for Highway Safety, University of North Texas Health Science Center, Center for Brain Cognitive Imaging, Virginia Tech Transportation Institute, University of Maryland – Baltimore – STAR ORC – National Study Center for Trauma and EMS, Prince George's County Office of State's Attorney, Department of Legislative Services

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Appendix – Distracted Driving

According to The Wireless Association (CTIA) in 2012, for the first time in U.S. history, the number of wireless device subscriptions (326.4 million) exceeded the U.S. population (315.5 million) for a penetration of 102.2%. In 2012, more than 2 trillion text messages were sent and more than 2 trillion voice minutes were used. The Insurance Institute of Highway Safety estimates that, at any given daylight moment, 660,000 people in the United States are using wireless devices while driving.

National surveys on distracted driving conducted by the National Highway Traffic Safety Administration (NHTSA) and other organizations appear to indicate a major disconnect between driving behaviors and the comprehension of risky behaviors that stem from the use of electronic devices. In other words, surveyed drivers generally believe it is dangerous for *other* drivers to make phone calls or text while driving. However, most drivers believe that they, themselves, can manage to make calls or text and still drive safely.

For example, in the 2012 National Survey on Distracted Driving Attitudes and Behaviors released in April 2013 by NHTSA, 28% of respondents admitted answering incoming calls on all or almost all driving trips. Of those who reported using a cell phone while driving, 58% reported that they *answer* and drive simultaneously, while 10% admitted to *sending* text messages or emails while driving – on at least some driving trips. An additional 11% reported sending text messages or emails on rare occasions. About 14% of respondents admitted to reading text messages and emails while driving. Of those who reported sending text messages or emails, 44% said they waited until stopped at a red light before sending; 35% drove while sending text messages and emails. Conversely, 8% of surveyed drivers reported asking a passenger to send the text or email, 7% reported using voice commands to send text messages or emails, and 6% reported that they pulled off the road to send a text or email.

Driver Distraction – A Definition: Distracted driving generally means any nondriving activity which has the potential to cause the driver to divert his or her attention away from the task of driving. This could mean activities as routine as changing a radio station, eating a sandwich, or inserting a compact disc into the car's player or it could mean talking to other passengers, focusing on an unrestrained pet, adjusting car mirrors as well as talking on a cell phone, texting, perusing the Internet, or otherwise using an electronic device. NHTSA has focused attention on the four main types of driving distraction:

- visual – taking eyes off the road;
- auditory – hearing noise or sounds that divert driver attention;

- manual – taking hands off the steering wheel; and
- cognitive – focusing attention on things other than the primary task of driving.

While any nondriving task that distracts a driver can endanger the safety of drivers, passengers, and pedestrians, enforcement efforts in Maryland and other states have focused on the dangers resulting from the use of handheld cell phones for phone conversations, texting, and other electronic communication activities. In Maryland, a distracted driving crash is defined by the Department of State Police as at least one driver in the crash either failing to pay full-time attention to the driving task or using a cell phone while driving. Texting while driving is regarded as especially dangerous since it requires a driver to be distracted visually, manually, and cognitively (however, many cell phones allow the sending and reading of text messages by voice so distraction by voice command texting could be limited to visual and cognitive). Handheld cell phone use is also regarded as dangerous since it may require (unless the phone allows voice commands to initiate and end calls) manual distraction as well as auditory and cognitive diversion of the driver's attention.

The National Transportation Safety Board (NTSB) regards nonemergency driver engagement with electronic devices as so dangerous that it has recommended that states enact legislation to prohibit the nonemergency use, while driving, of all portable electronic devices (unless designed to support the driving task) including *hands-free* cell phones. To date, no state has adopted the NTSB recommendation.

Prevalence of Distracted Driving in Maryland: The Maryland Highway Safety Office, which is part of the Motor Vehicle Administration in the Maryland Department of Transportation, reports that, during the five-year span from 2008 through 2012, an average of 229 fatal crashes and 19,790 crashes with injuries annually involved at least one distracted driver. On average, during the same five-year period, 92,418 crashes occurred on Maryland roads annually. The proportion of distracted driving-related crashes exceeds one-fifth of total traffic crashes.

Exhibit 1 shows the prevalence of distracted driving crashes by county in Maryland when compared to vehicle miles traveled for the five-year period of 2008 through 2012. Distracted driving crashes appear to be most likely to occur in urban areas with high population densities. As shown in the exhibit, Baltimore City and Prince George's and Baltimore counties had the highest percentages of distracted driving-related crashes when compared to the percentages of vehicle miles traveled in those jurisdictions. Conversely, the counties of Anne Arundel, Frederick, and Howard had the lowest percentages of distracted driving-related crashes when compared to the percentages of vehicle miles traveled in those jurisdictions.

Exhibit 1
Distracted Driving Crashes Compared to Vehicle Miles Traveled
2008-2012*

<u>Jurisdiction</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>% of Statewide Crashes</u>	<u>% of Statewide VMT</u>	<u>Over (+) Under (-) Representation</u>
Baltimore City	6,508	6,126	5,832	6,166	6,560	11.81	6.13	5.68
Prince George's	10,057	9,593	9,281	9,259	8,771	17.37	15.61	1.76
Baltimore	9,539	8,483	8,101	8,166	8,338	15.65	14.78	0.87
Charles	1,577	1,589	1,593	1,546	1,539	2.98	2.22	0.76
Montgomery	7,642	7,825	7,425	7,262	6,878	13.72	13.00	0.72
Wicomico	1,277	1,297	1,176	1,236	1,172	2.28	1.75	0.53
St. Mary's	980	981	1,023	1,007	1,073	1.97	1.49	0.48
Worcester	777	807	784	767	848	1.53	1.29	0.24
Calvert	761	800	752	700	747	1.40	1.33	0.07
Carroll	1,198	1,291	1,115	1,156	1,180	2.20	2.24	(0.04)
Kent	124	132	109	121	112	0.22	0.36	(0.04)
Somerset	183	206	169	176	169	0.33	0.50	(0.17)
Talbot	547	506	445	471	478	0.89	1.08	(0.19)
Dorchester	291	255	243	234	250	0.46	0.69	(0.23)
Harford	2,401	2,272	2,206	2,235	1,987	4.09	4.32	(0.23)
Caroline	236	268	227	221	229	0.43	0.67	(0.24)
Cecil	1,167	1,174	1,176	1,178	1,030	2.15	2.40	(0.25)
Garrett	314	308	280	265	223	0.49	0.94	(0.45)
Allegany	448	447	409	394	365	0.74	1.45	(0.71)
Queen Anne's	447	479	498	432	449	0.88	1.65	(0.77)
Washington	1,623	1,497	1,423	1,409	1,463	2.73	3.61	(0.88)
Anne Arundel	5,122	5,124	4,768	5,008	4,679	9.20	10.14	(0.94)
Frederick	1,930	1,902	1,548	1,608	1,797	3.15	5.33	(2.18)
Howard	1,787	1,810	1,702	1,752	1,799	3.34	7.03	(3.69)

* This table provides the number of crashes, in a county or Baltimore City, for the distracted driving program area that occurred over the designated five-year period. The percentage of statewide crashes is determined by comparing each jurisdiction's five-year average number of crashes with the average statewide number of crashes over the same period. This result is then compared to the jurisdiction's percentage of the statewide vehicle miles traveled (VMT) in 2012. The difference between these two numbers (last column) reveals whether the jurisdiction experienced a proportionately higher or lower number of crashes than is expected given its percentage of VMT. A positive number indicates a higher proportion of crashes is occurring with distracted driving as a causative factor. A negative number indicates that the jurisdiction experienced a lower number of crashes than expected, given VMT.

Source: University of Maryland, Baltimore – STAR ORC – National Study Center for Trauma and EMS

Maryland Enforcement Activity: Since 2005, Maryland has prohibited any individual younger than age 18 from using a wireless communication device while operating a motor vehicle (Chapters 543 and 544 of 2005). The use of such a device to contact 9-1-1 in an emergency is exempt from the prohibition. As of 2009, Maryland prohibited the writing and sending of text messages while operating a motor vehicle (Chapters 194 and 195 of 2009). In 2011, Chapters 471 and 472 expanded the prohibition to include the reading of text messages. As of 2010, Maryland specifically prohibited school bus drivers and provisional licensees who are age 18 or older from using a handheld telephone while operating a motor vehicle. All other drivers were authorized by the same law to use a hands-free telephone, but they could not operate the telephone with hands unless it was only to dial a number or to turn the device on or off (Chapter 538 of 2010).

Except for the offenses of reading, writing, or sending a text while driving, which were enacted as primary offenses, the offenses that prohibit the use of either handheld telephones or wireless communication devices were originally enacted as subject to secondary enforcement only. An officer could only enforce these violations if the officer had detained the driver for another suspected violation of Maryland law. According to data from the Administrative Office of the Courts, the total number of reported citations for handheld telephone violations with secondary enforcement in fiscal 2013, as shown in **Exhibit 2**, was similar, but somewhat lower than the number of reported citations for fiscal 2012. The number of texting citations, however, did show an increase, not only in the total, but also in those citations in which the offender chose to admit guilt and prepay the fine.

Enforcement of the offenses for use of handheld telephones or wireless communication devices was expanded to primary enforcement as of October 1, 2013, by Chapters 637 and 638 of 2013. Accordingly, an officer may detain a driver for the suspected unlawful use of a handheld phone or wireless communication device without observing or suspecting any other unlawful behavior. Chapters 637 and 638 also increased the penalties applicable to school bus drivers and adult drivers for handheld phone offenses from a maximum of \$40 to a maximum of \$75 for a first-time offense. The maximum penalties for a second offense increased from \$100 to \$125, and the law established a maximum penalty of \$175 for a third or subsequent offense. **Exhibit 3** shows citations issued for handheld telephone offenses (information on primary enforcement of the wireless communication device offense is not readily available) from October 1 through December 31, 2013, after the expansion to primary enforcement.

Exhibit 2
Maryland Electronic Device Driving Citations
Fiscal 2012-2013

<u>Offense While Driving</u>	<u>Enforcement Authority</u>	<u>Open</u>	<u>Prepaid</u>	<u>Trial</u>	<u>Total Citations</u>
<i>School Bus Driver w/Handheld Device</i>					
Fiscal 2013	Secondary	3	29	9	41
Fiscal 2012	Secondary	8	34	14	56
<i>Permit/Prov. License Holder – Adult w/Handheld Device</i>					
Fiscal 2013	Secondary	16	65	30	111
Fiscal 2012	Secondary	36	61	26	123
<i>Minor w/Wireless Communication Device</i>					
Fiscal 2013	Secondary	4	3	4	11
Fiscal 2012	Secondary	5	3	3	11
<i>Fully Licensed Adult w/Handheld Device</i>					
Fiscal 2013	Secondary	548	5,213	1,132	6,893
Fiscal 2012	Secondary	1,175	5,319	854	7,348
<i>Reading, Writing, Sending Text Messages</i>					
Fiscal 2013	Primary	184	649	341	1,174
Fiscal 2012*	Primary	175	368	149	692

*The existing prohibition was expanded to encompass reading a text message and its application was broadened to vehicles in the travel portion of the roadway (rather than those in motion) on October 1, 2011.

Note: The enforcement authority for many of these offenses changed from secondary to primary, beginning in fiscal 2014.

Source: Administrative Office of the Courts

Exhibit 3
Primary Enforcement – Handheld Telephone Offenses
October 1 – December 31, 2013

<u>Handheld Telephone Offense By</u>	<u>Enforcement Authorization</u>	<u>Open</u>	<u>Prepaid</u>	<u>Trial</u>	<u>Total</u>
School Bus Driver	Primary	10	6	1	17
Provisional Licensed Adult Driver	Primary	56	28	5	89
Fully Licensed Adult Driver	Primary	3,185	4,210	338	7,733

Source: Administrative Office of the Courts

The shift to primary enforcement, which became effective in the second quarter of fiscal 2014, has led to a significant increase in the number of handheld cell phone citations issued. For school bus drivers, a total of 41 citations were issued for handheld phone offenses in fiscal 2013. Since primary enforcement became effective in the second quarter of fiscal 2014, a total of 17 citations have been issued. That exceeds the number of citations issued in a typical quarter, assuming uniform enforcement. For provisionally licensed adult drivers, a total of 111 citations were issued in fiscal 2013. In a typical quarter, assuming uniform enforcement, about 28 citations would be issued. However, since primary enforcement became effective, a total of 89 citations have been issued to provisionally licensed adult drivers – all in the second quarter of fiscal 2014. The difference in primary enforcement is most telling with regard to fully licensed adult drivers, however. In fiscal 2013, a total of 6,893 citations were issued for handheld cell phone offenses. In just one quarter under primary enforcement, the number of citations to adult drivers for driving with handheld cell phones (7,733) has already exceeded the entire number issued for fiscal 2013.

Other States: According to the Governors Highway Safety Association (GHSA), as of January 2014, 12 states (California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, New Jersey, New York, Oregon, Washington, and West Virginia) and the District of Columbia prohibit the use of handheld phones by all drivers while operating a motor vehicle and authorize primary enforcement. No state completely prohibits the use of cell phones by regularly licensed, adult drivers. Also, 20 states (Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia) and the District of Columbia prohibit the operators of school vehicles that carry passengers from using a wireless telephone device while driving and authorize primary enforcement.

GHSA also reports that 41 states and the District of Columbia prohibit all drivers from texting while driving. In 37 states and the District of Columbia, primary enforcement is authorized. In four states (Florida, Iowa, Nebraska, and Ohio), secondary enforcement only is authorized. No laws prohibiting all drivers from texting while driving have been enacted in Arizona, Mississippi, Missouri, Montana, New Mexico, Oklahoma, South Carolina, South Dakota, or Texas. As noted earlier, some of these states, however, have enacted provisions limiting or prohibiting texting by specified populations (for example, novice drivers) or in certain situations (for example, school or construction zones).