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LED BULLETIN

***An important legal update for the Massachusetts law enforcement community
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Hands-free use of mobile electronic devices (cell phones)

No holding or viewing a mobile phone or electronic device by operator who is age 18 or older. This is the legal breakdown:

- **Just holding device prohibited.** No operator shall hold a mobile electronic device (note: this eliminates manual texting too); or
- **Just viewing screen prohibited.** No operator shall read or view the screen of an electronic device.

Applies even to stationary vehicle in travel or bike lane. A motorist may not hold or view a device even if vehicle stationary in travel or bike lane – e.g., stopped at a red light, or waiting in traffic, or double parked in road. The motorist must be parked outside the travel or bike lane.

These are primary enforcement violations. Police observation justifies a traffic stop.

Hands-free required. An operator may use a device only in “hands-free mode” (note: motorists may make or receive calls or texts in a hands-free audio format).

Important exceptions to viewing and/or holding an electronic device:

- **One touch rule.** “Hands-free” mode means the user engages by voice communication with the device, *except* that one touch is permitted to activate the hands-free feature. See 90, § 1.
- **GPS or navigational device** may be viewed if it is affixed to the windshield, dashboard, or console in a way that does not interfere with safe operation.
- **Emergency.** Calling EMS, police, fire, or other emergency services; or reporting a crash or disabled vehicle may be done with whatever device a motorist has.

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- **Public safety personnel** may use a mobile electronic device while operating an emergency services vehicle and engaged in the performance of duty.
- **Parked or off road.** An operator may hold or view a device “if the vehicle is stationary and not located in a part of the public way intended for travel by a motor vehicle or bicycle.”

STATUTE 90, § 13B PENALTY CMVI \$105; 2nd offense: CMVI \$255; 3rd offense: CMVI \$505.

- No police seizure or forfeiture allowed of a violator’s cell phone or electronic device.
- 2nd and subsequent offenses require attending a distracted driving program.
- Insurance surcharge for 3 or more offenses.
- Effective date of law is February 23, 2020. However, officers may only issue a warning until March 31st for holding an electronic device. After that, a money fine may be imposed for all 13B violations.

No changes for operators under 18. Junior operators already were prohibited from using mobile electronic devices except in emergencies. See 90, § 8M.

Traffic stop data review is back... with no extra police data collection

RMV must collect and EOPSS must review citation data. The end result of legislators’ concerns about racial profiling generally, and the improper use of the hands-free law in particular, was this: The RMV must collect and organize data provided by citations and transmit it to the Secretary of EOPPS for a public report broken down by police department. Data provided by the RMV may not identify individual motorists or officers. 90, § 63 provides data collection guidelines.

Police agencies generally will not be obligated to collect data in addition to what appears on Massachusetts Uniform Citations. The RMV will extract the information from citations – including written warnings – for use by EOPSS. If EOPSS, in consultation with the Attorney General, finds a police agency that “appears to have engaged in racial or gender profiling,” then the department may be required: (1) to collect additional data, including on vehicle stops that do not result in completion of a citation, and (2) to participate in “implicit bias training using best practices.”

Hope this helps you on the street,

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