

New Law Makes Texters Behind the Wheel Become Fair Game for Police

By Thomas J. Carr

Texting while driving is now an even riskier practice on New York roads with Gov. Andrew Cuomo signing into law legislation (S.5643) that allows law enforcement officers to pull over drivers solely for using hand-held electronic devices while operating a motor vehicle.

The new law makes texting while driving a primary traffic offense, whereas it used to be a secondary offense. Although texting while driving already was an illegal practice, police could not stop drivers for this violation as they could with primary offenses such as speeding. The new law, which went into effect immediately on July 12, kept the fine for using hand-held electronic devices while driving at a maximum \$150.

It is important for drivers to know that they can violate the law not only by composing and sending text messages but also by reading, assessing, transmitting, browsing, saving or retrieving data. Taking pictures with such devices, viewing or transmitting them also constitutes illegal activities, as does playing games, according to the Office of the Governor.

Under the law, people holding a portable electronic device “in a conspicuous manner” while driving are presumed to be using that device. A change in the law significant to the defense of people accused of texting while driving is rebuttable presumption with evidence “tending to show” the driver was not using the device. This new language could make it easier to prove someone was not texting while driving, compared to the old requirement for evidence “showing” non-use.

New York’s summer crackdown on distracted drivers is not ending with texters. Cuomo also changed state regulations to increase to three points from two the penalty using a handheld device or cellular phone without a hands-free device while driving.

“Operating a motor vehicle” is much broader than driving. Legally, if you are sitting in the driver’s seat with the keys in the ignition and the engine running, you are operating that vehicle, even if the transmission is in park and the car is not moving. Therefore, even if you pull over into a parking lot or to the side of the road to use your electronic device, you could still be charged under this law.

People ticketed for using a cell phone or any other hand-held electronic device while operating a vehicle should contact a criminal defense attorney.

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