



Texting While Driving

Training for Virginia Law Enforcement Personnel
on Code of Virginia § 46.2-1078.1



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Training Overview

- ▶ Update on recent changes to § 46.2-1078.1, aka “Texting While Driving”
- ▶ Elements to be covered:
 1. Risks of Distracted Driving
 2. Background on Texting Laws
 3. Overview of § 46.2-1078.1
 4. § 46.2-1078.1 - Exceptions and Exclusions
 5. Overview of § 46.2-341.20:5
 6. Making the Stop and Articulate Suspicion
 7. Confession
 8. Search and Seizure
 9. Sanctions
 10. Related Virginia Law
 11. Strategies for Enforcement



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Summary of Changes to § 46.2-1078.1

- ▶ In short, § 46.2-1078.1:
 - ▶ changed existing law from a secondary offense to a primary offense
 - ▶ increased the sanctions.



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Element 1: Risks of Distracted Driving

- ▶ Most drivers have handheld personal communications devices, capable of texting, emailing, accessing internet.
- ▶ Distracted driving is a broad term describing when a driver loses focus on the act of driving because of an external diversion like a handheld personal communications device, a crying child, a radio, etc.
- ▶ Public health research has found distracted driving to be highly dangerous.
- ▶ Texting while driving may be as much as six times more dangerous than DUI. (NHTSA, 2012)
- ▶ Texting while driving causes 3000 deaths per year and accounts for 330,000 injuries each year. (Harvard Center for Risk Analysis, 2012)
- ▶ Bans on texting while driving may result in more accidents as drivers attempt to hide their handheld personal communications devices below the dashboard. (Insurance Institute, 2010)



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Element 2: Background on Texting Laws

- ▶ The National Highway Traffic Safety Administration reports that:
 - ▶ 41 states ban texting while driving
 - ▶ It is a primary offense in 37 of those states
 - ▶ 11 states and D.C. ban handheld personal communications device use while driving
 - ▶ 37 states ban all handheld personal communications device use for novice drivers; 19 ban all handheld personal communications device use by bus drivers.
- ▶ Virginia does not ban use of handheld personal communications devices; does ban use of all handheld personal communications devices by drivers under 18 (§ 46.2-334.01) and school bus drivers (§ 46.2-919.1).



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Element 3: Overview of § 46.2-1078.1

Wording of the Law

- “A. It is unlawful for any person to operate a moving motor vehicle on the highways in the Commonwealth while using any handheld personal communications device to:
- ▶ 1. Manually enter multiple letters or text in the device as a means of communicating with another person; or
 - ▶ 2. Read any email or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored within the device nor to any caller identification information.”



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Element 3: Overview of § 46.2-1078.1 Meaning of the Law

- ▶ Since 2009, unlawful to operate a moving motor vehicle in Virginia while using a personal handheld communications device to:
 1. enter multiple letters or text in the device to communicate with another person
 2. read any email or text message sent to or stored in a handheld personal communications device other than a name or number stored in the device or any caller identification information.
- ▶ A driver may type text into a handheld personal communications device if that text does not represent personal communication.
- ▶ Voice operated text is not clearly precluded by this law.
- ▶ Consult Commonwealth's Attorney for guidance.



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Element 3: Overview of § 46.2-1078.1 Using a Handheld Personal Communications Device as a Phone

- ▶ Driver operating a moving motor vehicle may be able to use a handheld communications device as a phone to communicate with another person as long as they do not manually enter multiple letters or text.
- ▶ Law is not clear whether Skype, FaceTime, or similar applications represent communication.
- ▶ Consult Commonwealth's Attorney for guidance.



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Element 4: § 46.2-1078.1 Exceptions and Exclusions

- ▶ Section 46.2-1078.1 contains exceptions and exclusions that address four areas:
 1. someone operating an emergency vehicle
 2. a stopped or parked driver
 3. using a factory installed or aftermarket Global Positioning System (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system
 4. a person reporting an emergency.



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Element 4: § 46.2-1078.1

Exception 1 - Operating an Emergency Vehicle

“B. The provisions of this section shall not apply to: 1. The operator of any emergency vehicle while he is engaged in the performance of his official duties;”

- ▶ A driver operating a sanctioned emergency vehicle can engage in composing, sending, and/or reading work-related text messages or emails on a handheld personal communications device.
- ▶ It is important to note that these texts and emails must be part of their official duties.
- ▶ Using device for personal communications (texts, emails) is not protected.



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Element 4: § 46.2-1078.1

Exception 1 - Definition of “Emergency Vehicle”

There are seven definitions listed for “Emergency Vehicle”:

1. Any law-enforcement vehicle operated by or under the direction of a federal, state, or local law-enforcement officer;
2. Any regional detention center vehicle operated by or under the direction of a correctional officer responding to an emergency call or operating in an emergency situation;
3. Any vehicle used to fight fire, including publicly owned state forest warden vehicles, when traveling in response to a fire alarm or emergency call;
4. Any ambulance, rescue, or life-saving vehicle designed or used for the principal purpose of supplying resuscitation or emergency relief where human life is endangered;
5. Any Department of Emergency Management vehicle or Office of Emergency Medical Services vehicle, when responding to an emergency call or operating in an emergency situation;



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Element 4: § 46.2-1078.1

Exception 1 - Definition of “Emergency Vehicle” cont’d

6. Any Department of Corrections vehicle designated by the Director of the Department of Corrections, when that vehicle is:
 - ▶ responding to an emergency call at a correctional facility
 - ▶ participating in a drug-related investigation
 - ▶ pursuing escapees from a correctional facility, or
 - ▶ responding to a request for assistance from a law-enforcement officer.
7. Any vehicle authorized to be equipped with alternating, blinking, or flashing red or red and white secondary warning lights pursuant to § 46.2-1029.2.



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Element 4: § 46.2-1078.1

Exception 2 - Stopped or Parked

“B. The provisions of this section shall not apply to: 2. An operator who is lawfully parked or stopped;”

- ▶ A driver who is operating a motor vehicle that is lawfully parked or stopped can:
 1. Use a handheld personal communications device for any communication purpose not otherwise prohibited by law.
- ▶ Lawfully stopped is subject to the interpretation of judges. Wheels moving is not lawfully stopped. Wheels not moving (such as at a stop sign or traffic light) could be viewed as stopped.



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Element 4: § 46.2-1078.1 Exception 3 - Use of GPS

- “B. The provisions of this section shall not apply to: 3. The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system;”
- ▶ June 2013 opinion (#13-059) of Virginia Attorney General Kenneth Cuccinelli.



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Element 4: § 46.2-1078.1

Exception 4 - Reporting an Emergency

“B. The provisions of this section shall not apply to: 4. Any person using a handheld personal communications device to report an emergency.”

- ▶ Driver may use a handheld personal communications device to text or email information regarding an emergency and not violate Section 46.2-1078.1.
- ▶ Legislation does not specify situations that constitute an emergency.
- ▶ Consult local Commonwealth’s Attorney for guidance.



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Element 5: Overview of § 46.2-341.20:5 Commercial Motor Vehicle - Prohibition on Texting Wording of the Law

§ [46.2-341.20:5](#). Prohibition on texting; penalties.

- ▶ A. No person driving a commercial motor vehicle shall text while driving such vehicle. A driver who violates this section is subject to a civil penalty not to exceed \$2,750. Civil penalties collected under this section shall be deposited into the Transportation Trust Fund.
- ▶ B. Notwithstanding the definition of commercial motor vehicle in § [46.2-341.4](#), this section shall apply to any driver who drives a vehicle designed or used to transport between nine and 15 passengers, including the driver, not for direct compensation.
- ▶ C. The provisions of this section shall not apply to drivers who are texting when necessary to communicate with law-enforcement officials or other emergency services.



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Element 5: Overview of § 46.2-341.20:5 Commercial Motor Vehicle - Prohibition on Texting Definition of Texting

In this section of the Code of Virginia, texting is defined as:

- ▶ "Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a website, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry for present or future communication.
- ▶ "Texting" does not include inputting, selecting, or reading information on a global positioning system or navigation system; pressing a single button to initiate or terminate a voice communication using a telephone; or using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this section."



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Element 5: Overview of § 46.2-341.20:5 Commercial Motor Vehicle - Prohibition on Texting Definition of Commercial Vehicle

Section 46.2-341.20:5 references the definition of commercial motor vehicles in Section 46.2-341.4 which states:

- ▶ "Commercial motor vehicle" means, except for those vehicles specifically excluded in this definition, every motor vehicle, vehicle or combination of vehicles used to transport passengers or property which either: (i) has a gross vehicle weight rating of 26,001 or more pounds; or (ii) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed vehicle with a gross vehicle weight rating of more than 10,000 pounds; or (iii) is designed to transport 16 or more passengers including the driver; or (iv) is of any size and is used in the transportation of hazardous materials as defined in this section. Every such motor vehicle or combination of vehicles shall be considered a commercial motor vehicle whether or not it is used in a commercial or profit-making activity."



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Element 5: Overview of § 46.2-341.20:5 Commercial Motor Vehicle - Prohibition on Texting Summary of the Law

In short, § 46.2-341.20:5:

- ▶ Prohibits texting by a driver who is operating a commercial motor vehicle.
- ▶ Includes a civil penalty of up to \$2,750 for violation.
- ▶ Defines texting in a broader fashion than § 46.2-1078.1, to include internet searches and reading or sending either texts or emails.
- ▶ “Driving” means “operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays,” unlike the stopped or parked clause in § 46.2-1078.1.
- ▶ Applies to anyone driving a vehicle designed or used to transport between nine and 15 passengers, including the driver, not for direct compensation, and not withstanding the definition of commercial motor vehicle in § [46.2-341.4](#).



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Element 5: Overview of § 46.2-341.20:5 Commercial Motor Vehicle - Prohibition on Texting Summary of the Law cont'd

Section § 46.2-341.20:5 does not apply to:

- ▶ drivers who are texting while operating a commercial motor vehicle when necessary to communicate with law-enforcement officials or other emergency services.
- ▶ inputting, selecting, or reading information on a GPS or navigation system while driving a commercial motor vehicle.
- ▶ pressing a single button on a handheld personal communications device to initiate or end a voice communication.
- ▶ using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this section.



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Element 5: Overview of § 46.2-341.20:5 Implications

- ▶ In § 46.2-341.20:5, texting encompasses entering "alphanumeric text" into, or reading text from, an electronic device.
- ▶ Some courts may look to this definition of texting as they enforce § 46.2-1078.1, Virginia's Texting While Driving law.
- ▶ If courts apply this definition of texting, then entering text to access a website is prohibited as is entering text, numbers, letters to find a contact in a handheld personal communications device database.
- ▶ Consult local Commonwealth's Attorney.



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Element 6: Making the Stop and Articulable Suspicion

- ▶ When officer directly observes driver violating § 46.2-1078.1., may stop, cite driver immediately.
- ▶ Absent direct observation of driver texting while driving, officer bears burden of proof for providing justification for texting while driving stop.
- ▶ Officer must be able to provide reasonable, articulable suspicion for making the stop, based on observed driver conduct.
- ▶ Observable driver conduct/actions indicative of texting while driving may include: looking down for periods of time; swerving within lane; failure to maintain appropriate speed; not following traffic laws; reflection of handheld personal communications device in driver's face, etc.



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Element 7: Confession

Obtaining a Confession

- ▶ If officer suspects but does not directly observe texting while driving, § 46.2-1078.1 difficult to enforce without confession.
- ▶ Obtaining/eliciting driver's confession is important step when officer stops driver on suspicion of texting.
- ▶ To obtain or elicit confession, officer might say:
 - ▶ “My experience and training indicate that a driver behaving as you were (swerving, weaving, driving too fast/slow, etc.) was either driving under the influence of drugs/alcohol or was texting while driving. If you were driving under the influence you could go to jail and lose your license. If you were texting while driving, emailing, reading information on your handheld personal communications device, there is a small fine. Were you doing one of these?”
- ▶ If driver confesses to texting while driving, citation may be issued.



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Element 7: Confession

Absent a Confession

- ▶ Driver may not confess to texting while driving; says using handheld personal communications device for allowable actions, e.g., using device as a phone, using device's GPS function, or operating a feature of vehicle (radio, air conditioner, etc.)
- ▶ Officer may:
 - ▶ caution the driver;
 - ▶ charge the conduct observed, e.g., improper driving, reckless driving, failure to signal, etc.;
 - ▶ ask driver for consent to search device.
- ▶ Consult local Commonwealth's Attorney.



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Element 8: Search and Seizure Considerations

- ▶ Once stopped, driver is subject to observation, questioning, investigation.
- ▶ If stop leads to other criminal infractions, search and seizure laws may apply.
- ▶ No “hard and fast” rules about searching handheld personal communications devices.
- ▶ Legislation and case law have not caught up with use of handheld personal communications devices.
- ▶ Consult local Commonwealth’s Attorney.



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Element 9: Sanctions

- ▶ The sanctions associated with § 46.2-1078.1 are straightforward:
 - ▶ “A violation of this section is a traffic infraction punishable, for a first offense, by a fine of \$125 and, for a second or subsequent offense, by a fine of \$250.”
 - ▶ no points are applied to the driver’s record for infractions of § 46.2-1078.1.
 - ▶ a driver may re-offend with little long term penalty, other than paying fines.



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Element 10: Related Virginia Law Reckless Driving

- ▶ Section 46.2-852 (Reckless Driving) states:
 - ▶ “Irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving.”
- ▶ Attorney General Cuccinelli issued an opinion (June, 2013) indicating that merely operating a handheld personal communications device, with no other evidence of driving behavior endangering life or property, does not constitute reckless driving.
- ▶ This opinion means that the Reckless Driving statute exists in a fashion that is largely independent of the texting while driving ban.
- ▶ A driver can be charged and convicted of one, or the other, or both, but only if the conditions for the appropriate charge are present.



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Element 11: Strategies for Enforcement

Public awareness and information sharing may have greater long term benefits than issuing citations. At local level...

- ▶ conduct public awareness campaigns about risks of texting while driving.
- ▶ speak at high schools and college/university orientation sessions, telling teens that texting while driving is a primary offense, distracted driving kills.
- ▶ warn teens that texting while driving provides reasonable suspicion for stopping vehicle, and opening driver, passengers, vehicle to inspection.
- ▶ issue “DNT TXT N DRV THX” bumper stickers/magnets.
- ▶ warn drivers who appear to be texting but deny it, that texting is primary offense, dangerous, and risks lives of driver, passengers, other drivers, pedestrians.



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Resources

▶ Visit the following websites for more information:

1. National Highway Traffic Safety Administration: www.nhtsa.gov or www.distraction.gov
2. Insurance Institute for Highway Safety: www.iihs.org
3. Virginia Tech Transportation Institute: www.vtti.vt.edu
4. Drive Smart Virginia: www.drivesmartva.org
5. Smart, Safe and Sober: www.smartsafeandsober.org



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Wrap Up

- ▶ As of July 2013, Section 46.2-1078.1 changed from secondary to primary offense; sanctions increased
- ▶ Gist of the law unchanged
- ▶ Continue to enforce as before July 1, 2013
- ▶ Consult local Commonwealth's Attorney



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Thank you for your time and attention.



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