

Distracted driving ... do you think your cops are doing it? You bet they are!

By Matthew Heins, Law Enforcement Action Forum Coordinator



It is no secret that distracted driving is a major issue in today's era of always-connected technology. Simply look around the next time you are in the passenger seat and the results will be obvious. Distracted drivers often exhibit the same driving behaviors as intoxicated drivers: weaving over the road, fluctuating speed, missing traffic lights, and generally driving in an unsafe manner. The National Highway Traffic Safety Administration reported 3,166 people were killed by distracted driving in 2017. This is truly a matter of life or death.

While we deeply wish that police officers were never involved in such incidents, a quick internet search returned some tragic examples:

LA Sheriff Pays \$12M for Distracted Driving Collision, Government Fleet, 3/30/18

Distracted police officers cause hundreds of crashes in metro Denver, Fox 31 Denver, 2/3/14

Missouri police officer distracted by phone crashes into bicyclist head on, video shows, NBC 26 Green Bay, 7/27/18

Police drive distracted, causing wrecks, 41 Action News, 5/6/13

Although far fewer articles were found of officers involved in crashes because of distracted driving than during vehicle pursuits, the issue undoubtedly needs to be addressed. We must work to improve awareness of distracted driving on the job and to implement effective preventive measures.

The Distracted Brain

While most people believe they can perform multiple tasks at once, and do them well, this is not the case. A vast body of research shows that performance diminishes as people try to handle more and more tasks simultaneously. This is because, despite our subjective feeling of "multitasking," our brains actually work on just one task at a time, switching between them so quickly that we are unaware. This juggling act takes our brains time and attention to manage, which reduces our overall level of performance.

In addition, every waking moment, our senses take in more information than our brains can possibly handle. To avoid overload, our brains scan the raw data, selecting some information as important enough to notice and process, and tagging the rest as irrelevant. Sometimes though, our brains make mistakes and filter out important information at this stage – before it even reaches our consciousness.

Scientists have coined the term *inattention blindness* for the failure to see visible but unexpected objects or events because our attention is engaged elsewhere. Understandably, this is more likely to occur when we are focused on a complicated task, or are under stress or tired. (It can also happen when performing routine actions in very familiar situations ... complacency makes us less watchful.)

It's a Circus Out There

Imagine you're walking along and suddenly a clown on a unicycle rides across your path. You would notice, right? Hard to miss, right? Don't be so sure!

In one study on inattention blindness, subjects who talked on a cell phone while walking through a college campus were *half* as likely to notice a clown riding a unicycle across their path than control subjects who walked while listening to music on earphones, or walked without a device, alone or in pairs. The cell phone talkers were also more prone to weaving over the path, walked more slowly, acknowledged other people more rarely, and changed direction more often (sound familiar?).

Types of Distractions

According to a 2013 National Highway Traffic Safety Administration report to Congress, driving distractions can be caused by electronic devices such as navigation systems and cell phones, or more conventional sources such as interacting with passengers or eating. These distractions affect drivers in different ways and can be grouped into three major types:

Visual distraction: the driver looks away from the roadway to obtain information;

Manual distraction: the driver takes a hand or hands off the steering wheel to manipulate an object or device;

Cognitive distraction: the driver assumes the mental workload of thinking about something other than driving.

Texting while driving is especially dangerous because it combines all three types of distraction. When you send or read a text, you take your eyes off the road for about 5 seconds – at 55 mph, that's long enough to cover the length of a football field. When your finger taps or swipes a screen, that's manual distraction, even if your device is dash-mounted. And cognitive distraction is inevitable as you think about the text's contents and start planning what to text back.

Even “only” talking on the phone while driving provides enough cognitive distraction to cause inattention blindness, according to a 2012 National Safety Council report. Just as walkers were “blind” to that unicycling clown, a driver on the phone can fail to “see” a pedestrian in the crosswalk right in front of them.

Unfortunately, because we usually don't notice when we have failed to notice something, we tend to be overly confident in our multitasking abilities and sail along, thinking we're doing just fine. Then one sunny afternoon, we're talking on the phone and change lanes, only to slam into another vehicle that seems to have appeared "out of the blue." We say, "But I looked first and he wasn't there; I know I looked!"

While the focus of the Safety Council report was the use of cell phones, you can certainly assume distraction increases substantially with all the equipment in a patrol vehicle.

Patrol Vehicles: The Officer's Mobile Office

In some ways, today's police vehicles are similar to a regular office. Information comes in on a computer, calls come in (on cell phone and radio), and sometimes a co-worker shares the space (there's a second officer in the car). All these are potential distractions or interruptions that could cause anyone to lose track of what they are doing. The difference is, if someone becomes distracted in a regular office, they don't run the risk of running into people with a 5,000-pound vehicle.

To complicate matters, the content of police vehicles has evolved over the years to include increasingly numerous and complex instruments:

- Mobile radios that scan multiple channels
- Computers that perform multiple functions
- Cameras which must be monitored to ensure proper functioning and compliance with department policy
- Body microphones which must be monitored to ensure proper functioning and compliance with department policy
- Cell phones for talking, texting or searching the internet
- A radar unit
- An AM/FM radio may still be present

Meanwhile, officers' primary focus is still to prevent crime and respond to calls for service. The work can be fast and furious, requiring the ability to prioritize, evaluate and continuously adjust. Officers need to be alert, scanning the exterior environment for cues that something may be out of order or crime is afoot. They also need to monitor the vehicle's interior to ensure proper functioning of equipment and vehicle performance. A never-ending flow of information bombards officers from a multitude of sources, in a multitude of formats. Receiving this information, processing it, and then making decisions on what to do, and how to do it, can be overwhelming.

Preventive Measures

What can we do to prepare our officers to better handle this onslaught of information and reduce distracted driving? Awareness is key. Training is key. Our device pings and we automatically glance at the screen – officers must learn to override such temptations and make conscious choices about where to focus their attention.

While risks can never be eliminated, an organization's goal should be the adoption of best practices in identifying, evaluating, and reducing risk to an acceptable level. Distracted driving is a behavior within

officers' control. By making better choices and following appropriate driving techniques, officers can prevent crashes. Management must make safety a priority and emphasize it repeatedly to employees. A culture of safety is vital to addressing the problem.

The following steps can be taken to reduce your agency's exposure:

- 1) Policies should be clear and concise in detailing what behavior is unacceptable. At a minimum, they should include no texting, emailing, internet searches, social media, use of the computer, or eating while driving. Talking on a cell phone while the vehicle is in motion should be allowed only in emergency situations. The policy should be reviewed with employees annually.
- 2) Document all training.
- 3) Consider using technology that tracks vehicle speeds and sends out notifications when a set speed is reached. Cell phone blocking technology is another option.
- 4) Consider having officers sign an agreement stating they will not allow behavior in vehicles they are driving that will contribute to distracted driving. An ideal time to review this agreement is during their annual performance review.
- 5) Sponsor training, such as Below 100, to emphasize the importance of a safety mindset for officers' own protection.
- 6) Ensure supervisors enforce policy and investigate complaints of officers driving while distracted.
- 7) Debrief all vehicle crashes with staff for lessons learned and what measures can be taken to prevent future crashes.

Governmental Immunity and Officer Responsibility

Audrey Forbush, LEAF Legal Advisor of Plunkett Cooney, explained in the *Law Enforcement Action Forum Newsletter* (vol. 21, issue 2) that governmental agencies exercising or discharging a governmental function have immunity from tort liability, with some exceptions (MCL 691.1407). One of these is the Motor Vehicle Exception which states, in part, "Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner." MCL 691.1405.

Officers are granted individual immunity under MCL 691.1407(2) if their actions meet three conditions:

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Negligence is measured by what an ordinary reasonable person would do under similar circumstances. Examples of negligence might include: driving at excessive speed without regard for the ability to safely stop or avoid a hazard or obstruction; ignoring traffic control devices without slowing and checking for hazards; ignoring obstructed views at intersections; passing vehicles when there is limited sight ahead; or driving without consideration for road conditions, traffic volume, or pedestrian traffic.

Gross negligence is “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(8)(a).

Forbush cautions that even if officers can show they were not grossly negligent in operating the vehicle and a court grants them individual immunity, their actions could still bring liability to the municipality through the negligent operation of a motor vehicle exception to governmental immunity.

The legal case *Case v Consumers Power Co., 463 Mich 1 (2000)* established the elements that must be met for a successful claim of negligence:

- 1) A duty of care owed by the defendant
- 2) A breach of that duty
- 3) An actual causal connection comprised of cause of fact and proximate cause
- 4) Damages resulting from the defendant’s action

To prove negligence, in addition to the officer’s actions, plaintiffs may look to statutes and department policies that guide officers and delineate what discretion they have.

Choices

Consider two different scenarios. The first involves an officer driving down the road obeying all traffic laws, who becomes distracted for a moment while looking at a person on a street corner and rear ends a vehicle, causing serious injury to the driver. Could the officer’s actions be considered grossly negligent? Probably not.

The second scenario involves an officer driving down the road, exceeding the speed limit while talking on a cell phone, looking down at the computer, and paying little heed to the surroundings, who rear ends a vehicle, causing serious injury to the driver. Could the officer’s actions be considered grossly negligent and the officer be found liable for the crash? Perhaps.

While there is no certain outcome, as each situation will contain its own set of unique facts, one thing is undeniable: if you are the second officer, you have increased your exposure to liability by your conduct prior to the crash, and your fate is much more likely to depend on a jury making a close judgment call.

As an officer, do you choose to drive distracted and risk causing damage, injuries, or death? You make this choice every time you take the wheel.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.

LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure.

Do not hesitate to contact the Michigan Municipal League's Loss Control Services at 800-482-2726 for your risk control needs and suggestions.

Are you an MML Insurance Program Member? Are you a Law Enforcement Executive?

If so, visit the MML's online [Law Enforcement Risk Control Manual](#) to access model policies and procedures developed by the LEAF Committee.

Go to: <http://www.mml-leaf.org/lerc.php>

Click on the green "Member Login" box in the left-hand panel.

At the Login screen, enter your username and password.

If you don't have a username and password, click "Request Access" and complete the online form.

The LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Law Enforcement Risk Control Manual. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the state.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

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