Learning from the Past to Improve the Future: Taking a Lesson from America’s Drunk Driving Dilemma to Cure the Current Texting While Driving Epidemic

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You know it is against the law. You know it is dangerous, even deadly. Regardless of these realizations, you continue to do it when you get behind the wheel. Why? Perhaps your desire for instantaneous communication outweighs your fear of getting caught. Or maybe your deviance is attributable to an invincible “it can’t happen to me” attitude. No matter what the reasoning may be, American drivers continue to risk their lives and the lives of others by texting while traveling on public roadways. Existing legislation prohibiting texting while driving has failed to deter motorists from engaging in the distracted driving behavior, which is why it is time for a new, more effective approach.

I. INTRODUCTION

The evolution of the cellular phone (cell phone) has established the electronic device as a staple in American life.¹ Unlike landline telephones, which only facilitate voice conversations between individuals, cell phones also allow users to correspond through text message.² Text messaging has

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² See id. (In 1992, the “world’s first commercial text message is sent by employees of Logica CMG.”).
become an increasingly popular form of communication for American consumers over the past decade.\footnote{See generally id.} For instance, in 2007 more than 362 billion text messages were transmitted between American cell phone users.\footnote{See id.} Five years later, the annual number of text messages in the United States increased substantially, totaling over two trillion messages.\footnote{See id. (noting the total number of text messages sent in the month of December 2012 was 171.3 billion messages).} These exorbitant numbers indicate the high prevalence of text messaging in American culture, igniting serious concerns for public safety when cell phone users engage in texting while driving on public highways.\footnote{See Alexis M. Farris, \textit{LOL? Texting While Driving Is No Laughing Matter: Proposing a Coordinated Response to Curb this Dangerous Activity}, 36 WASH. U. J.L. & POL’Y 233, 236-37 (2011).}

Sending or receiving text messages while operating a motor vehicle is a form of distracted driving, which transpires when a motorist “is delayed in the recognition of information needed to safely accomplish the driving task because some event, activity, object, or person within or outside the vehicle compels or induces the driver’s shifting attention away from the driving task.”\footnote{Amy L. Brueckner, \textit{Distracted Driving: How Technological Advancements Impede Highway Safety}, 115 PENN. ST. L. REV. 709, 711 (2011) (noting that “one of the most prominent and prevalent forms of distracted driving, however, involves the use of cell phones”).} The devastating consequences associated with texting while driving have established distracted driving activity as a leading public safety concern.\footnote{A. Starkey De Soto, \textit{Intextication: Texting Whl Drvng. Does the Punishment Fit the Crime?}, 32 U. HAW. L. REV. 359, 361 (2010) (noting that “it comes as no surprise that texting while driving is considered a deadly epidemic that is sweeping across the nation”).} In 2008, “the National Safety Council estimated that texting while driving caused as much as eighteen percent of motor vehicle crashes.”\footnote{Id.} Figures such as these support a legislative solution to tackle the national problem of texting while driving.\footnote{See id.; Brueckner, supra note 7, at 715.}

In 2009, both the United States Senate and the House of Representatives examined the Avoiding Life-Endangering and Reckless Texting by Drivers Act (ALERT Drivers Act).\footnote{Brueckner, supra, note 7, at 715; De Soto, supra note 8, at 386; Thomas E. Sherzan, Note, \textit{“TALK 2 U L8R”—Why Cell Phones and Driving Have “G2G”: An Analysis of the Dangers of Cell Phone Use While Driving}, 59 DRAKE L. REV. 217, 245 (2010).} The proposed statute, if enacted, would require each state to legislate a texting while driving law “that both prohibits text messaging while driving and delineates some minimum penalty that
increases for each repeated offense.”12 Additionally, the ALERT Drivers Act provides that any state that failed to ratify a law, fitting within these parameters within two years, would forfeit up to twenty-five percent of its federal highway funding.13

Previously, similar federal statutes commandeering state legislatures in order to act and promote public highway safety were effective.14 For instance, nearly three decades ago Congress enacted the National Minimum Drinking Age Act of 1984, which required states to outlaw the sale of alcohol to individuals under the age of twenty-one.15 This federal mandate was designed to combat the significant number of fatalities and serious injuries resulting from drunk driving automobile accidents in the United States.16 Today’s texting while driving epidemic is comparable to the drunk driving dilemma that existed thirty years ago.17 Although Congress has declined to ratify the ALERT Drivers Act,18 the implementation of a federal statute outlining minimum penalties for state texting while driving legislation is necessary to combat the current public safety crisis on American roadways.19

This Note proposes a federal mandate that provides state legislators with the necessary guidance for establishing minimum penalties for texting while driving offenses. The federal mandate relies heavily on the reckless nature of texting behind the wheel as a basis for unifying punishment and seeking national compliance. Part II of this Note examines current federal and state legislative efforts aimed at eliminating texting while driving. Part III discusses the dangers of the distracted driving behavior consistently reiterated by news media, national advertising campaigns, and scientific research. Part IV highlights the similarities between the current texting while

13. Farris, supra note 6, at 252 (citing Avoid Life-Endangering and Reckless Texting by Drivers Act of 2009, S. 1536, 111th Cong. § 3(b) (2009)).
14. See Brueckner, supra note 7, at 716 (“The federal government has successfully used its power to set a uniform standard for one other traffic safety issue: drunk driving.”).
17. See Noder, supra note 16, at 275-76; see also De Soto, supra note 8, at 378.
18. See Brueckner, supra note 7, at 716.
19. See id.
driving epidemic and the drunk driving dilemma in the 1980s to illustrate the need for an effective federal mandate. Additionally, Part IV proposes substantive requirements for the federal mandate designed to successfully deter motorists from risking their life and the lives of others for something that can certainly wait until their car is parked and keys are out of the ignition.

II. BACKGROUND: EXISTING STATE LEGISLATIVE SOLUTIONS

Currently, legislation targeting texting while driving on public highways mainly exists at the state level. Two exceptions to this general rule include Executive Order 13,513, which prohibits texting while driving for federal workers while fulfilling their professional duties, and chapter forty-nine of the Code of Federal Regulations section 390.17, which applies to operators of commercial vehicles. In 2009 alone, twelve states enacted laws banning texting while driving. As of February 2014, forty-one states, the District of Columbia, and Puerto Rico prohibit texting while driving. While these statutes share the same objective of “prevent[ing] future fatalities and injuries” resulting from texting while driving, the sanctions imposed for the distracted driving behavior varies across jurisdictions.

California implements the weakest penalties for texting while driving. A driver cited for their first texting while driving offense must pay a fine of twenty dollars and will not suffer any reflection of the infraction on their Department of Motor Vehicle record. Any subsequent texting while driving offense the driver commits will result in a fine of fifty dollars. At the

20. The Dangers of Texting While Driving, FCC, https://www.fcc.gov/guides/texting-while-driving (last visited Feb. 16, 2014); see also Brueckner, supra note 7, at 715-16 (noting federal legislation has been proposed, but not approved by Congress).

21. Farris, supra note 6, at 254 (“On October 1, 2009, President Obama took a significant step in doing just that by signing Executive Order 13,513, which prohibits federal employees from text messaging or emailing when driving on official business or using government-supplied electronic equipment while driving.”); Sherzan, supra note 11, at 244-45 (“The federal ban on text messaging for drivers of commercial vehicles, such as trucks and buses, was effectuated based on recommendations by Anne Ferro, Administrator for the Federal Motor Carrier Safety Administration.”).

22. De Soto, supra note 8, at 375-76.


24. Brueckner, supra note 7, at 715.

25. Farris, supra note 6, at 249.

26. Id.; CAL. VEH. CODE § 12810.3 (West 2010).

27. § 23123.5(d).
other end of the penalty spectrum are Utah and Alaska.28 A motorist cited for texting while driving for the first time in Utah may suffer a misdemeanor conviction, up to three months in jail, and a fine of up to $750.29 Alaska’s legislators, wanting to send a clear message to its residents regarding the seriousness of the distracted driving activity, “made the penalty for driving while text messaging the same as driving under the influence violation.”30

Massachusetts provides a somewhat moderate approach to financial penalties for texting while driving infractions.31 In 2010, Governor Patrick signed into law the Safe Driving Law, which prohibited motorists from “writing, sending, or reading an electronic message, including text messages, e-mails, and instant messages, or accessing the Internet” while driving.32 The first texting while driving offense is punishable by a $100 fine; the second offense imposes a $250 fine; and the third offense and any later citations receive a $500 fine.33

The severity of the penalties imposed for texting while driving is not the only variance in legislation amongst the states.34 The category of driver that is prohibited from sending or receiving text messages and whether the offense is subject to primary or secondary enforcement are other legislative variables.35 For example, Missouri’s statute only bans texting while driving for motorists who are twenty-one years old or younger.36 Also, texting while driving laws subject to primary enforcement allow law enforcement officials to demand any motorist exhibiting the prohibited distracted driv-
ing activity to pull their vehicle over in order to issue the driver a citation for the offense. 37 Secondary enforcement laws require that “an officer needs a separate reason to stop the driver and an additional citation for illegal cell phone use may be issued.” 38

III. THE DANGERS OF TEXTING WHILE DRIVING

Despite the lack of uniformity amongst state texting while driving legislation, the majority of American drivers recognize the need for a complete texting while driving ban. 39 This public support is most likely attributable to media attention, advertising campaigns, and research studies illustrating the dangers of texting while driving. 40 Unfortunately, these efforts designed to increase the awareness of the dangerous consequences of texting behind the wheel are only a stepping-stone on the path to effectively dealing with the public safety issue. 41

A. Media Coverage and Advertising Campaigns: Raising Public Awareness for the Texting While Driving Epidemic

Over the past decade, the texting while driving epidemic has flooded the national news. 42 Media coverage detailing tragic automobile accidents involving motorists who engaged in text messaging while driving has increased public awareness of the serious highway safety issue. 43 A devastating incident occurred on November 28, 2010 as Nina Todd (Todd) was traveling home from visiting her mother with her two sons when another driver, Karli Brown (Brown), struck Todd’s vehicle head-on. 44 Following

37. Sherzan, supra note 11, at 237.
38. Id.
39. See Thomas B. Falkner III, Comment, Michigan’s Texting Ban: One Step Forward, Too Many Steps Back, 28 T.M. COOLEY L. REV. 121, 122 (2011) (“According to an October 2009 New York Times/CBS News poll, 97% of the people surveyed supported making texting while driving illegal.”); see also Farris, supra note 6, at 259 (“Current public support for laws banning texting while driving is between 80 and 97 percent, which again highlight the contradiction between the words and actions of American drivers.”).
41. See Farris, supra note 6, at 256-58.
43. See id. (noting the death of an eighteen-year-old Georgia resident, which was attributed to texting while driving, prompted state legislators to ban texting while driving); De Soto, supra note 8, at 370 (describing how “a BlackBerry was blamed for a five-car pileup” in the state of Washington in 2006).
44. Real-life Stories: Shattered Lives, IOWA DEP’T OF TRANSP.,
the collision, Todd remained stuck behind the wheel of her car, as she watched her sons, five-year-old Maliki and four-year-old Alex, “slip into lifelessness strapped into their car seats in the back seat.”45 Police investigators later reported Brown “was speeding, texting and passing in a no-passing zone when the crash happened.”46 Todd and other Iowa residents formed an organization called Raising Awareness Involving Distracted Driving (RAIDD), which visits high schools across the state to share the dangers of texting while driving.47 Todd wrote the following testimonial, which RAIDD members deliver to its high school audiences: “I sat in a car and watched with my own eyes what one text did to my life. I sat and watched my two boys be covered with sheets and was told they were dead. No one deserves to live with the pain I live with.”48 Nina Todd’s experience is only one of countless stories the national media has highlighted discussing the life-shattering consequences of texting while driving.49

National campaigns aimed at deterring drivers from sending or receiving text messages while behind the wheel of their vehicle routinely emphasize the fatal risks correlated with the distracted driving practice.50 For instance, America’s leading wireless company, Verizon Wireless, employs “billboard, radio, and television advertisements that appeal to drivers’ emotions” in its “Don’t Text and Drive” campaign, which hinges on the notion

http://www.iowadot.gov/CurbItClickIt/stories.html (last visited Mar. 15, 2014) (showing that Brown was traveling almost twenty miles per hour over the speed limit and attempting to pass two other cars in a “no passing” zone).

45. Id.
47. Real-life Stories: Shattered Lives, supra note 44.
48. Id.
49. See id.; see also Arnold et al., supra note 42, at 157.

On December 15, 2009, eighteen-year-old Caleb Sorohan was driving along a Morgan county road when he drifted over the centerline, collided head-on with a truck, and died instantly. According to his cellular phone records, in the minutes before his death, Caleb was rapidly sending and receiving text-based communications; he was “texting.” In the wake of this tragedy, Caleb’s family led an initiative calling for a law banning texting while driving. On June 4, 2010, Governor Sonny Purdue signed such a measure into law entitled the Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving (“Caleb’s Law”).


50. Farris, supra note 6.
that “every driver has someone in [their] life who ‘would really like to see you get home safely.’”\textsuperscript{51} Even Oprah Winfrey contributed to “rais[ing] awareness about the dangers of driving while using a cell phone” when she established April 30 as “No Phone Zone Day.”\textsuperscript{52} Although news coverage and public service announcements focus the public’s attention on the potential hazards of texting while driving, empirical data demonstrating the effects and consequences of distracted driving is also persuasive.

\textbf{B. Research Emphasizing the Dangers of Texting While Driving}

Previously, compiling statistics reflecting “crash information caused by text messaging” was challenging “because many law enforcement agencies do not collect data concerning cell phone use and text messaging involved in crashes, nor have many long-term studies been conducted.”\textsuperscript{53} Researchers have utilized unique methods to demonstrate, and in some cases even simulate, the dangers of texting while driving.\textsuperscript{54} In 2008, the Transport Research Laboratory (TRL) released findings from a driver simulator study employing seventeen motorists between the ages of seventeen and twenty-five.\textsuperscript{55} Each motorist “completed a distraction-free drive as well as a drive in which researchers instructed them to read a received message, compose and send a message, or ignore an incoming message.”\textsuperscript{56} Not surprisingly, this study revealed that drivers took a greater amount of time to react to driving conditions when composing or reading a text message while driving.\textsuperscript{57} More specifically, “researchers observed that drivers, while texting, ‘were less able to maintain a constant distance behind a lead vehicle and showed increased variability in lateral lane position when following that

\begin{footnotes}
\item[53.] Sherzan, supra note 11, at 223.
\item[54.] See id.; see also Farris, supra note 6, at 238-40.
\item[56.] Id.
\item[57.] See id. at 11.
\end{footnotes}
The Virginia Tech Transportation Institute (VTTI) completed a well-publicized study in 2009, which utilized video surveillance of motorists in order to capture any changes in behavior when using a cellular device while driving. VTTI researchers monitored “drivers for more than six million miles of driving,” establishing that “tasks that draw the driver’s eyes away from the forward roadway were those with the highest risk” and “that text messaging while driving created a 23.2 times higher risk of a crash or near-crash event as compared to a non-distracted driver.” Following these findings, the VTTI advocated a complete ban on texting while driving on public roadways.

Car and Driver Magazine also conducted a study in 2009, accentuating the dangers of texting while driving. Car and Driver Magazine employees utilized a Honda Pilot equipped “with a red light that, when illuminated, alerted the driver to brake, thereby testing the driver’s reaction time under four different conditions: when unimpaired; when over the legal driving limit with a blood alcohol content of 0.08; when reading a text message aloud; and when sending a text message.” In each of these four situations, while traveling at seventy miles per hour, “it took the driver just half of a second to hit the break when unimpaired; when legally drunk, the driver took an additional four feet to come to a complete stop; when reading a text message, thirty-six feet; and, when sending a text message, seventy feet.” The implications of this study draw a resemblance between the dangers of texting while driving and driving under the influence of alcohol.

IV. HOW FEDERAL LEGISLATION MANDATING A NATIONAL DRINKING AGE CAN SERVE AS A BLUEPRINT FOR TEXTING WHILE DRIVING LEGISLATION

Drivers who choose to text message while behind the wheel of a car, similar to individuals who decide to drive home after consuming multiple alcohol beverages, are engaging in behavior that is not only dangerous to
themselves but to others as well. Although research reveals that texting while driving impairs an individual’s driving ability at least as much as driving under the influence of alcohol, the lack of federal action and variances among state legislation demonstrate an unwillingness to equate the seriousness of the distracted driving activity with that of drunk driving. Additionally, although media coverage and anti-texting campaigns highlighting the dangers of texting and driving fuel public support for texting while driving bans, motorists continue to engage in the activity.

A. The Drunk Driving Dilemma and Congress’ Successful Mandate

In the 1980s, the federal government exercised its powers vested in the Tax and Spending Clause in order to “encourage state legislatures to raise the minimum drinking age to twenty-one” with its enactment of the National Minimum Drinking Age Act of 1984. Any state that did not comply with Congress’ suggestion, forfeited five percent of its federal highway funding. The government’s justification for compelling states to comply with a higher national drinking age was to improve highway safety by decreasing the prevalence of drunk driving in America. Specifically, “policymakers aimed to reduce alcohol-involved traffic accidents among the 18-to-20 age group.”

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65. Farris, supra note 6, at 238-39.
66. Tara M. Franklin, Comment, Done with Distracted Driving: Implications of Pennsylvania’s Ban on Text-Based Communication While Driving Under the State Constitution, 117 PENN. ST. L. REV. 171, 174 (2012) (“Research also indicates that text messaging while driving is at least as dangerous as driving under the influence of alcohol.”).
68. Lazerow, supra note 55, at 16 (“An AAA Foundation poll found that over ninety-four percent of drivers consider it unacceptable to send text messages or emails while driving, with almost eighty-seven percent of respondents considering such activity a ‘very serious threat to their personal safety.’ Further, numerous surveys show that over eighty percent of drivers favor legislation outlawing texting while driving.”); see also Sherzan, supra note 11, at 225 (“According to polling conducted by the New York Times, ninety-seven percent of individuals polled support a ban on text messaging while driving. Nearly half the respondents felt punishment for texting and driving should be as strict as that imposed for drunk driving.”).
69. Brueckner, supra note 7, at 716 (citing Richtel, supra note 28).
70. See BERGIN, supra note 16, at 85-86.
71. Brueckner, supra note 7, at 719.
72. Id. at 719-20.
73. BERGIN, supra note 16, at 85.
The constitutionality of the National Minimum Drinking Age Act of 1984 was challenged in *South Dakota v. Dole*, where the U.S. Supreme Court held that this exercise of Congress’ spending power was constitutional. Following the Court’s decision in *Dole*, every state established a minimum drinking age in order to preserve its federal highway money. In its opinion, the Court provided the following three limitations, which applied to Congress’ exercise of its spending power:

First, the exercise of the spending power must be in pursuit of general welfare. In determining whether the spending power pursues the general welfare courts should defer substantially to the judgment of Congress. Second, Congress must unambiguously condition states’ receipt of federal funds, thereby enabling the States to exercise their choice knowingly, cognizant of the consequences of their participation. Finally, conditions on federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs.

The courts have routinely applied this three-step analysis when examining the constitutionality of federal mandates, enacted by Congress through its tax and spending powers.

Statistics demonstrate that Congress accomplished its ultimate goal of improving highway safety with its federal mandate inducing states to elevate the national drinking age to twenty-one. Reportedly, deaths resulting from motor vehicle accidents involving drunk driving declined 53% from 1982 to 2011. Although the federal government mandates a national drinking age, each state delegates sanctions for driving under the influence. Similar to texting while driving bans, drunk driving laws “vary among states,” but unlike penalties for the distracted driving activity, punishments for driving under the influence “typically include large monetary fines and the possibility of jail time and/or license suspension.”

The steady increase in the number of fatalities each year resulting from texting while driving demonstrates a substantial compliance problem with existing texting while driving bans. Most American drivers disregard the

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75. Brueckner, supra note 7, at 719 (citing *Dole*, 483 U.S. 203).
76. *Id.* (citing *Dole*, 483 U.S. 203) (internal quotation marks omitted).
77. See *id.* at 717.
79. *Id.* at 8.
80. See Noder, supra note 16, at 269.
81. *Id.*
82. See De Soto, supra note 8, at 361.
possible penalties for the distracted driving offense and “continue the dangerous activity and run the risk of getting caught.” Therefore, current texting while driving penalties fail to serve their legislative purpose of deterring motorists from texting while behind the wheel of their car. “Because individuals who acknowledge the dangers of using cell phones while driving often continue this behavior, many citizens and lawmakers believe government sanctions are the most effective means of limiting this conduct.” Congress should take a page out of its own book, utilizing its course of action during the drunk driving dilemma in the 1980s and apply it to the current texting while driving epidemic.

B. Federal Minimums for Texting While Driving

1. Existing Problems with the ALERT Drivers Act

The ALERT Drivers Act, if enacted, would withhold twenty-five percent of federal highway funding to any state failing to ratify texting while driving legislation fulfilling the mandate’s required conditions. Comparing this amount to the five percent Congress threatened to withhold in its mandate regarding the national drinking age, the federal government should establish a more reasonable percentage to achieve compliance. Additionally, the ALERT Drivers Act fails to provide state legislatures with any guidance on establishing a minimum penalty for texting while driving. The significant noncompliance issue with existing state legislation illustrates the need for federal guidance in order to institute penalties that drivers will take seriously.

84. Id.
85. Franklin, supra note 66, at 175; see Safety Culture: Heads Up Driving Week—September 26-October 2, 2010 Fact Sheet, AAA FOUND. FOR TRAFFIC SAFETY (2011), available at https://www.aaafoundation.org/sites/default/files/2010HUDWs.pdf (noting that 80% of drivers expressed support for having a law “against reading, typing, or sending text messages or emails while driving”); see also Farris, supra note 6, at 259 (“Current public support for laws banning texting [while driving] is between 80 and 97 percent, which again highlights the contradiction between the words and actions of American drivers.”).
86. Farris, supra note 6, at 252 (citing Avoid Life-Endangering and Reckless Texting by Drivers Act of 2009, S. 1536, 111th Cong. § 3(b) (2009)).
87. Brueckner, supra note 7, at 719-20.
88. See Farris, supra note 6, at 252 (citing Avoid Life-Endangering and Reckless Texting by Drivers Act of 2009, S. 1536, 111th Cong. § 3(b) (2009)).
89. See generally Noder, supra note 16, at 237.
2. Proposed Federal Texting While Driving Mandate

This Note proposes a new federal texting while driving mandate, which would address the downfalls of the ALERT Act by providing states with more guidance regarding minimum penalties. The proposed mandate requires primary enforcement for texting while driving violations, since a secondary enforcement designation (i.e., requiring that “an officer need a separate reason to stop the driver [in order for] an additional citation for illegal cell phone use to be issued”)\(^90\) carries the connotation that the violation is not so serious to warrant an officer’s attention absent another traffic violation.\(^91\) Primary enforcement for this dangerous distracted driving behavior is the only option to strengthen the already low public compliance.\(^92\)

The percentage of federal highway funds each state stands to lose if it chooses not to comply with the federal mandate must be more reasonable than the amount delineated in the ALERT Act.\(^93\) Considering the success of the National Minimum Drinking Age mandate, which only threatened to withhold five percent of federal funding, it is unlikely states will forfeit financial assistance similar to that amount.\(^94\) Setting the percentage of funds withheld for non-compliance at ten percent increases the likelihood that Congress will approve the federal mandate.\(^95\)

There is a subset of those who support texting while driving bans and who argue that penalties for the distracted driving offense should be equivalent to the sanctions imposed for drunk driving.\(^96\) This argument is persuasive since research indicates that texting behind the wheel increases the risk of an automobile collision “nearly the same as that of a legally drunk driver.”\(^97\) Currently, the only state to implement this approach to punishing such offenders is Alaska, which in 2008 “made the penalty for driving while text messaging the same as a driving under the influence viola-
tion . . . ."98 The underlying rationale for increasing sanctions for texting while driving to parallel those enforced for drunk driving is to “convey the seriousness of the [distracted driving] offense,” in an effort to deter the dangerous behavior and increase public safety on America’s highways. 99

State legislators must establish harsher penalties for texting while driving “in order to increase compliance with the laws.”100 The lack of uniformity amongst existing legislation promotes the need for the federal government to exercise its power under the Tax and Spending Clause to guarantee improved legislation that will effectively discourage drivers from texting while driving.101 Although research demonstrates texting while driving is at least as dangerous as driving under the influence,102 compelling states to punish the distracted driving offense similarly through a federal mandate may be too radical to gain congressional support. The fact that both U.S. Houses of Congress declined to pass the ALERT Act, which consists of less severe parameters than existing drunk driving sanctions,103 implies that it is less likely that a federal mandate requiring states to implement equivalent punishments for texting while driving and driving under the influence would obtain approval.104

During its effort to increase public highway safety during the 1980s, the federal government did not designate exactly how states were to punish driving under the influence. Instead, the federal government set a minimum drinking age, decreasing the accessibility to alcohol across the nation.105 Therefore, each state maintained its discretionary power over punishing the underlying offense of drunk driving.106 The success of the National Minimum Drinking Age Act of 1984, in decreasing the number of alcohol related automobile accidents, supports instituting a floor for state highway sanctions rather than boxing each state into a room with four walls and a ceiling with specific punishments for texting while driving equivalent to drunk driving.107 A more moderate approach to texting while driving sanctions, recommending minimum punishments as suggested in Congress’ ALERT

100. Id. at 274.
101. See Brueckner, supra note 7, at 719; see also BERGIN, supra note 16, at 85-86.
102. See Farris, supra note 6, at 238-39 (citing Austin, supra note 63).
104. Contra De Soto, supra note 8, at 386.
107. See BERGIN, supra note 16, at 85-86.
Act,\textsuperscript{108} would increase the likelihood of state compliance to a federally instituted mandate.

\textit{a. Monetary Penalties}

Harsher fines for texting while driving are necessary to increase compliance with texting while driving laws.\textsuperscript{109} Currently, “[w]ith the penalty for violating these laws ranging from just twenty to one hundred dollars in most cases, this nominal amount is not sufficient to persuade people to . . . stop texting while driving.”\textsuperscript{110} The ALERT Act failed to provide any guidance to state legislators regarding an appropriate minimum financial penalty for texting while driving, but did recommend the penalties should increase for each repeated offense.\textsuperscript{111} An increase for each repeated offense is appropriate, but setting the floor with an exact dollar amount for the first texting while driving offense is more difficult as evident by the current range in fines amongst the states.\textsuperscript{112} In light of the dangerous consequences of texting while driving, an individual who disregards the law prohibiting the distracted driving behavior and continues to engage in texting behind the wheel exhibits gross recklessness.\textsuperscript{113} Therefore, a federal mandate requiring every state to punish first-time offenders with a fine that is at least equal to, but not less than, the fine imposed for reckless driving is an appropriate minimum.\textsuperscript{114}

The federal mandate should also require each state to record violations on the driving records of texting while driving offenders, equaling the same amount of points one would receive for reckless driving in that state.\textsuperscript{115} Unlike a one-time fine, this penalty would punish texting while driving offenders continuously. For instance, it is common practice for car insurance companies to utilize a customer’s driving record in order to establish the monthly/annual premium dollar amount a customer must pay in order to maintain coverage.\textsuperscript{116}

\begin{itemize}
  \item \textit{108.} See Brueckner, supra note 7, at 715; De Soto, supra note 8, at 386; Sherzan, supra note 11, at 217.
  \item \textit{109.} Noder, supra note 16, at 275.
  \item \textit{110.} Id.
  \item \textit{111.} Brueckner, supra note 7, at 715-16 (citing Avoid Life-Endangering and Reckless Texting by Drivers Act of 2009, S. 1536, 111th Cong. § 167(b)(2)(A)-(B) (2009)).
  \item \textit{112.} See Brueckner, supra note 7, at 714-15.
  \item \textit{113.} See Falkner, supra note 39, at 161-62.
  \item \textit{114.} See id. (“A $ 100 fine for the first offense and a $ 200 fine for the second are hardly effective deterrents for a dangerous behavior like texting while driving.”).
  \item \textit{115.} See id.
\end{itemize}
b. Non-Monetary Penalties

Most importantly, similar to sanctions for reckless driving, the federal mandate influencing state texting while driving legislation must compel states to designate texting while driving offenses as a misdemeanor offense, rather than a civil traffic violation. Additionally, the possibility of license suspension and/or revocation should be incorporated into the punishment regime subsequent to the first texting while driving offense. Additionally, the possibility of license suspension and/or revocation should be incorporated into the punishment regime subsequent to the first texting while driving offense. For instance, a driver cited for texting while driving for their second time would suffer suspension of their driving privileges for three months. This sanction would most likely be highly inconvenient for individuals and would require them to find alternative transportation to their employment and other important responsibilities. In some jurisdictions, reckless driving offenders are sentenced to a term of imprisonment ranging anywhere from two weeks to two years in jail. Punishments such as these would undoubtedly increase compliance with texting while driving bans, since drivers are less likely to risk the possibility of losing their driving privileges.

V. CONCLUSION

The texting while driving epidemic is a serious public safety concern infecting highways across America. Personal accounts of victims and their families and national advertising campaigns highlight the devastating nature of texting behind the wheel, while research demonstrates that the distracted driving behavior is at least as dangerous as driving under the influence of alcohol. Although a majority of states have passed legislation banning texting while driving, the risky behavior continues as a result of lenient and inconsistent punishments across jurisdictions. A federal mandate requiring states to punish texting while driving more severely is necessary.
the best solution to this national crisis, especially since its likelihood of decreasing distracted behavior and increasing compliance with texting bans is supported by the success of the National Minimum Drinking Age Act of 1984. The penalties imposed for texting while driving offenses must be as severe as those imposed for reckless driving, which would include both financial and non-monetary punishments that increase with each subsequent offense. Specifically, the negative non-monetary sanctions such as license suspension and/or revocation, jail time, and the designation of a misdemeanor criminal offense are effective deterrents that each state should include in its ban on texting while driving in order to reinforce the dangerousness of distracted driving behavior. The devastating consequences stemming from the failure of existing texting while driving laws can be interpreted as a cry for help from state legislators. The federal government must answer with a mandate such as the one proposed in this Note in order to improve the safety of American highways for drivers and passengers across the country.

125. See BERGIN, supra note 16, at 85-86.