

AMENDING ORD. 0069-2023  
COG 333.11(d)(1) – DISTRACTED DRIVING PENALTIES

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GAHANNA COMMITTEE OF THE WHOLE 2-12-24

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Clerk of Council

I don't know how to thank you enough for giving this matter the time and effort you're all giving it. I've been trying for way too many years to get people just to *understand* this problem, let alone consider fixing it.

Imagine this scenario: You are hit by a car and when the squad arrives, the police tell the EMTs that the offender was sober. So, the EMTs give you little or no treatment; they just drive you to the hospital. At the hospital, they tell the doctors the offender was sober, so the doctors give you little or no treatment.

Would we as a society stand for this? Of course not—we'd be outraged if the health care system treated crash victims this way. But, we allow the legal system to treat crash victims this way.

I can give you four reasons why you should put stronger penalties into our distracted driving law. I can offer you the only argument against it that I've ever heard, and it is flawed.

#### REASON ONE: JUSTICE

State law declares that crime penalties must be proportionate to the seriousness of the offense and must not demean the impact on the victim. Sounds good, huh? But, there's a catch. If the traffic offense isn't charged as a felony, it's not a crime. Yes, you heard me right. It's not automatically a crime to seriously injure or kill with a car. So, this proportionate and not demeaning stuff doesn't apply.

In my case, where there was one death and two serious injuries, the prosecutor not only chose to leave the charge as assured clear distance, he denied my specific request to change the charge to **at least** vehicular manslaughter. I had no recourse. I have learned in my 23 years of advocacy that my case is not unusual. The penalty for ACDA is a fine equal to the fine for littering. Where is the justice in that? The \$75 check the offender mailed in was absolutely demeaning to my family and me!

Psychologists tell us that acknowledgment that a wrong was done is crucial to healing from a trauma. The state has yet to acknowledge that a wrong was done to my family. Instead, it has said my husband's life was worth no more than a candy wrapper.

#### REASON TWO: CONSISTENCY

It is a felony for drunk or drugged drivers to cause serious injury or death. Felonies have harsh penalties. It is not a felony for other drivers to cause serious injury or death **unless** the prosecutor chooses to use the felony charge of aggravated vehicular assault or aggravated vehicular homicide. Vehicular manslaughter isn't even a felony!

#### REASON THREE: PRECEDENCE

There is a precedent for requiring stronger penalties. When Gov. DeWine decided to take on the distracted driving problem, he did several things. He had ODOT form a Distracted Driving Task Force to study the problem and make recommendations. I was a member so I can assure you we were diligent and thorough and our membership included a broad range of experience and expertise. Our

report<sup>1</sup> was made public in April of 2019. I have given the Chief and others copies of that report previously. One of our recommendations was to generally “Increase the fines, points and penalties for distracted driving.”

He also created the Ohio Traffic Safety Council to identify areas for improvement, with emphasis on action items. One of the first subcommittees formed was the Distracted Driving Subcommittee. I am also a member of that although it is important for you to know that my in my advocacy here I am speaking for myself, not on behalf of the Council or the subcommittee.

And, with the governor’s input SB 285--the unsuccessful first attempt at what became our current new state distracted driving law--was introduced in February of 2020. It created the offenses of “vehicular assault by distracted driving” and “vehicular homicide by distracted driving,” to address the usual serious injury or death on a par with DUI penalties. Taking harm seriously, it also created a new offense to address a new lower level of harm, “vehicular harm by distracted driving.” These offenses had escalating penalties.<sup>1</sup>

Despite 25 proponent testimonies and only the public defender as an opponent, Senate leadership did not support 285 and it died in committee. The next attempt was to put its provisions into the House’s transportation budget bill the next year, but they were then removed with the thought that distracted driving should be dealt with as a stand-alone bill. My requests to have a say in what was asked for in the next bill—our current law—were ignored and these extra penalties for harm were not kept.

There is also a precedent for a city to take traffic safety matters into its own hands when the state repeatedly fails to do so. In 1999, after the state had failed to pass two distracted driving bills, Brooklyn, Ohio, made its own law. By 2009, when the state had spent 10 more years failing to act on 16 more bills, many cities spent the next three years passing their own laws.

In 2012, the General Assembly finally enacted HB 99 which our state representative, Nancy Garland, introduced, at my request. The Senate severely weakened it at the last minute by making it a secondary offense. When Gov. Kasich signed it, he said he would have done so even if it had been stronger. At least it gave us this provision for stronger local penalties.

#### REASON FOUR: SAFETY

It is believed that the stronger the penalty, the stronger its deterrent factor. Obviously, the ultimate goal is to prevent crashes, especially those that cause serious injury or death. If stronger penalties are enacted, publicized, **and** routinely implemented, they could help reduce the number of distracted crashes.

#### THE ARGUMENT AGAINST THIS

Opponents of stronger penalties for causing serious injury or death by offenses like speeding, running a red light, following too closely, or holding your phone (sadly, it’s still legal to distract your mind with your phone, but that’s a fight for another day) say “but he didn’t mean to.”

The public defenders office, state lawmakers, and others use this argument and they mean that the crash and horrible results were accidental. The driver didn’t intend to crash, much less cause all that harm. There are at least two flaws in this argument. The most obvious is that drunk drivers don’t “mean to” either, but we punish them severely. The other flaw is that the drivers didn’t mean not to, either. They didn’t take well-known precautions to avoid the risk. They made a conscious choice to break that law, come what may.



It can even be argued that drunk or drugged drivers are less culpable because when they make the decision to drive dangerously their judgment, their ability to make wise choices, is already impaired. This is not the case with the other drivers when they make their choice to drive dangerously.

#### CONCLUSION

I'm not asking you to address these other moving violations. That's the state's job and I'll keep working at that level. But, the state distracted driving law has a specific provision allowing stronger local penalties. Our City Attorney has put much thought into her proposed language. So I'm asking you to have the compassion and courage to use that provision and put these proposed penalties into section 333.11 of our traffic code.

Even if you decide not to put these stronger penalties in our code, I am extremely proud of my city for being this responsive to the concerns and request of individual citizens. Who says "you can't fight city hall?" And Tricia and I didn't even have to "fight." Thank you very, very much.

<sup>1</sup>*The report can be found online with the search term ODOT Distracted Driving Task Force Report.*

<sup>2</sup>*Vehicular harm by distraction = M1; class 5 DL suspension (6 months to 5 years), \$500 - \$1000 fine  
Aggravated vehicular assault by distraction = F3 [same as DUI]; class 3 DL suspension (2-10 years), max. \$10,000  
Aggravated vehicular homicide by distraction = F2 [same as DUI]; class 1 DL suspension (life), max. \$15,000*

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