

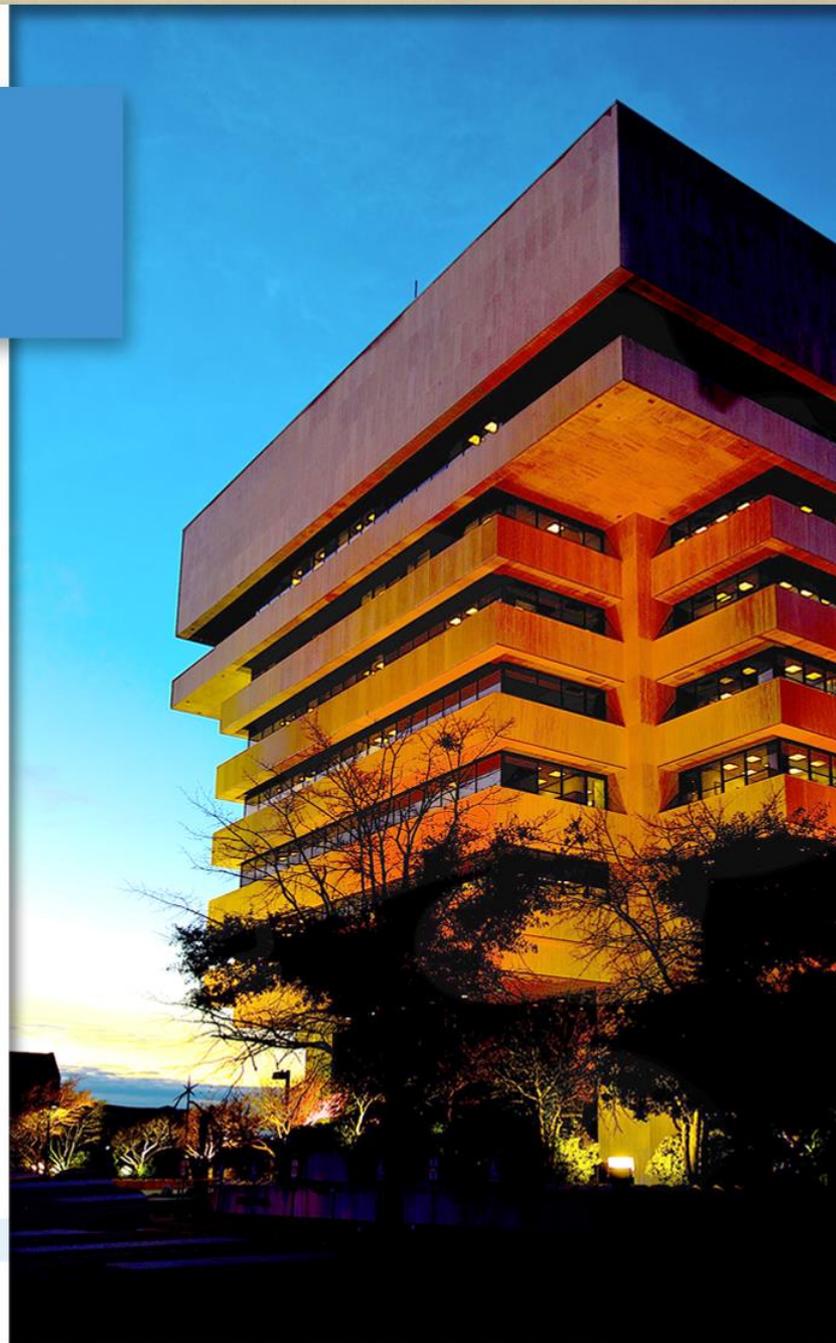
# HAMPTON VA

## Hampton Police Division



## Distracted Driving

January 23, 2018



# State Law

## **Va. Code 46.2-1078.1**

It is unlawful for any person to operate a moving 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.

# State Law Continued

## **Va. Code 46.2-1078.1**

Provides exceptions for:

1. Emergency vehicle operators
2. An operator lawfully parked or stopped
3. The use of factory-installed or aftermarket GPS or wireless communications devices used to transmit or receive data as part of a digital dispatch system
4. Any person reporting an emergency

# State Law Continued

## **Va. Code 46.2-1078.1**

- A violation of this section is a traffic infraction punishable, for a first offense by a fine of \$125.00 and, for a second or subsequent offense by a fine of \$250.00.
- If a violation occurs in a highway work zone, it shall be punishable by a mandatory fine of \$250.00.

# State Law Continued

## **Va. Code 46.2-1078.1**

- Difficult to enforce because while certain cell phone activities are prohibited, others such as use of social media, watching videos, surfing the web, etc., are not.
- Impossible for the officer to know whether person was engaging in prohibited activities without an admission or search of phone records.

# State Law Continued

## **Va. Code 46.2-1300**

Grants localities the power to adopt ordinances regulating operation of vehicles on the streets and roads within their jurisdiction.

Penalties for such ordinances cannot be greater than the penalty imposed for a similar offense in state code.

# City of Hampton Law

City Code Sec. 21-1 adopts non-felony provisions of state code.

# City of Hampton Law Cont.

## City Code Sec. 21-113 (new law)

- *Any person who drives a motor vehicle on any public street or highway in the city while using any handheld personal communications device where such use diverts the driver's attention from the operation of the motor vehicle is guilty of distracted driving.*
- *The provisions of this section shall not apply to an operator (i) of any emergency vehicle while he is engaged in the performance of his official duties; (ii) who is lawfully stopped or parked; (iii) using a handheld personal communications device to report an emergency; or, (iv) using a handheld radio-based communications device during an emergency or disaster relief operation.*
- *A violation of this section shall constitute a separate and distinct offense. The provisions of this section shall not preclude prosecution under any other statute.*
- *A violation of this section is a traffic infraction punishable, for a first offense by a fine of \$125.00 and, for a second or subsequent offense, by a fine of \$250.00.*

## City of Hampton Law Cont.

- *“Any person who drives a motor vehicle on any public street or highway in the city while using any handheld personal communications device where such use diverts the driver’s attention from the operation of the motor vehicle is guilty of distracted driving.”*
- ***Officer must observe use of handheld device AND evidence of distraction.***

## Other localities

Spotsylvania: No person shall operate a motor vehicle upon any street, road, or highway in the county without giving their full time and attention to the operation of the motor vehicle. Any person violating this section shall be guilty of a traffic infraction of distracted driving. Any violation of this section shall be punishable by a fine of not more than one hundred dollars (\$100.00).

# Distracted Driving

State Code (21-1-46.2-1078.1)	2014	2015	2016	2017	2018	Total
HPD Enforcement State Code	10	5	2	2	12	31

**WAYV News: “Family of Williamsburg mom killed after Snapchat post pleads for change in driving law”**

## **Crashes with Drivers Using Cell Phones:**

2013 – 2018: 13% increase says Virginia Dept. of Motor Vehicles

**“If you're using your phone, you might as well be drunk”**

Del. Mike Mullin (D-District 93) said.

Source: WAVY NEWS - **By:** Sara McCloskey

Updated: Jan 17, 2019 07:56 AM EST

# Distracted Driving (2011-2016)

Hampton	Fatal	Non-Visible Injury	Visible Injury	Property Damage
Distracted Driving Accidents	2	748	187	1450

## The Wireless Association

Since 2010

Multimedia Messages **400% Increase**  
Annual Wireless Data Usage **2000%+ Increase**

NHTSA estimates nearly 660,000 drivers use their phone while driving each day during daylight hours.

**Source:** Analysis: Virginia Distracted Driving Collisions 2011-2016  
<https://www.virginiasinjurylawyers.com/virginia-distracted-driving/>

# Distracted Driving

State Code (21-1-46.2-1078.1)	2014	2015	2016	2017	2018	Total
Use of Handheld Personal Communication Device	10	5	2	2	12	31

## The Wireless Association

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# Distracted Driving

- **25% of all fatal crashes were distraction-related in 2017.**
  - **(This number is likely understated as distraction is sometimes difficult to measure in the event of a fatality.)**
- **Distracted driving fatalities, top jurisdictions: Suffolk, Chesapeake, Newport News, and Albemarle County.**
- **Distracted driving injury crashes, top jurisdictions: Virginia Beach, Newport News, Hampton, and Richmond City.**

*Source: Virginia DMV*

# Distracted Driving (Practical HPD Enforcement)

## State Code:

- Allows for charging if texting observed while driving (No Search Warrant Required unless phone is analyzed)
- No required observation of affected vehicle operation

## City Code:

- Requires visual observation of device use AND Required observation of affected vehicle operation
- HPD Body Worn Cameras provide for officer accountability

# Conclusion / Questions

