

You Could Kill Someone and Go to Jail for Talking or Texting While Driving – California Vehicle Code Sections 23123, 23124

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Haverhill, Mass., February 2011

Aaron Deveau was only 17 years old when he struck and killed Donald Bowley, a 55-year old father of three and critically injured the deceased man's girlfriend who was a passenger in the car Bowley had been driving. Aaron's attention wasn't focused on the road that day, it was focused on the 193 text messages he had been sending using his smartphone. One particular text cost a man his life. According to police investigators, the teenager had been texting a minute before the fatal crash and continued texting after the accident. By taking his eyes off the road, Aaron altered the course of his life and that of his victim for the worse. Forever.

Deveau's case drew national attention. In June 2012, he became the first person at the time to be convicted under a stringent new Massachusetts law calling for severe punishment for anyone who causes injury or property damage while driving distracted due to reading, sending and receiving text messages. Deveau was convicted of both vehicular homicide and negligent operation, as well as several other traffic violations and was sentenced to two-and-a-half years in prison.

Additionally, Deveau's license to drive a vehicle was suspended for 15 years. Deveau must live the rest of his life with the burden of knowing he killed someone when he foolishly tried to text and drive at the same time – a lesson he is certain never to forget, and hopefully will not repeat.

Newport Beach, California, August 2008



California is cracking down on texting while driving. Distracted driving could lead to vehicular manslaughter, which comes with severe penalties.

Martin Bert Kuehl didn't see the light turn green at the intersection of Dover Drive and Westcliff Street in Newport Beach, Calif. on August 29, 2008. He also didn't see Martha Ovalle, a nanny, step into the crosswalk in front of his SUV. Kuehl was busy texting on his cellphone when the driver behind him honked the horn to get Kuehl's attention. Distracted by his text messaging, Kuehl stepped on the gas, striking Martha Ovalle and killing her.

Though it was unknown to investigators called to the scene of the homicide why Ovalle was in the crosswalk illegally, California traffic laws state that a driver must give right of way to any pedestrian regardless. Kuehl admitted to Newport Beach police officers that he did not see Martha in the crosswalk when he hit her, although he also admitted he had an unobstructed view.

In January 2009, Kuehl was found guilty of committing gross negligence and convicted of vehicular manslaughter. On April 9, 2009, Martin Bert Kuehl was sentenced to serve four years in prison for killing Martha while driving distracted due to texting on a mobile device.

Using a Wireless Device while Driving in California

The California legislature has enacted Vehicle Code Section 23123 and Vehicle Code Section 23123.5 in order to help decrease the frequency of talking, texting and emailing while driving.

On July 1, 2008, California made it illegal for anyone over the age of 18 to use a wireless telephone while driving a motor vehicle, unless the device had "hands free" listening and talking features (i.e. Bluetooth). On January 1, 2009, it became illegal

for individuals to drive a vehicle while writing, sending or reading text messages, instant messages or emails.

Drivers under the age of 18 are prohibited from using a wireless device for any reason while driving a motor vehicle (California Vehicle Code section 23124).

Talking while Driving Penalties – VC 23123

Vehicle Code Section 23123 prohibits a driver from talking on the phone in a vehicle unless the telephone is equipped with hands free talking and listening features. Using “push to talk” features is not allowed under current California law. A violation of the law is an infraction, punishable by a fine of \$20 for a first offense and \$50 for each subsequent offense. Additionally, these fines are subject to what is known as a “penalty assessment” – meaning, the ultimate cost to you is much higher than \$20 or \$50. The penalty assessment can be as much as 260 percent of the base fine, which means you could have to pay as much as \$52 for a first offense and \$130 for each subsequent offense if you are convicted of violating the law.

Exempt from Vehicle Code 23123 are emergency response personnel when acting in an official capacity, as well as to anyone calling for assistance from the police, fire department or another county or state agency in an emergency. While it is permissible to dial phone numbers while driving, the California Department of Motor Vehicles “discourages” such practice.

Emailing and Texting while Driving Penalties – VC 23123.5

California also prohibits the use of any “wireless communication device” to write, send or read a text message, email or instant message pursuant to Vehicle Code section 23123.5. The definition of wireless communication device includes iPads or other similar tablets, iPods and all smartphones.

Similar to Vehicle Code Section 23123, Vehicle Code Section 23123.5 does not prohibit the use of reading or entering data into any device for the purpose of making or receiving a telephone call. Similar emergency provisions exist for this code section as well.

If you are convicted of violating Vehicle Code Section 23123.5, you face the same fines as you would for violating Vehicle Code section 23123; \$20 for the first offense, \$50 for each subsequent offense, and a penalty assessment of up to 260 percent.

Because of the high rate of frequency of distracted driving, law enforcement personnel are paying much closer attention to drivers who willfully violate the laws

against driving while talking on a non-hands free cell phone and texting/emailing while driving, especially among younger drivers. Your chances of being involved in a traffic collision increase dramatically when your attention is diverted from watching the road and driving responsibly.

A fine pales in comparison to what could happen to you if you practice “distracted driving” by using your smartphone or wireless device to talk, text or email while behind the wheel.

Vehicular Manslaughter Penalties – PC 192(c)

Distracted driving can cost lives and could cost you your freedom, just like what happened to Kuehl in 2008. If you kill someone while you were talking or texting while driving, you could be facing [vehicular manslaughter](#) charges. California’s vehicular manslaughter laws punish acts of driving that kill another person because the driver:

- Drives in an unlawful way,
- Drives in a lawful but dangerous way, or
- Knowingly causes the accident for financial gain

Prosecutors are likely to charge you with Penal Code 192(c) if you killed another person while you were texting or talking on your cell phone without the assistance of a hands-free device.

Vehicular manslaughter in California is what’s known as a “wobbler” offense. This means that the prosecutor has the option to charge you with either a felony or a misdemeanor. The District Attorney’s office usually decides this based on:

- The facts of your case, and
- Your criminal history

If you are convicted of misdemeanor vehicular manslaughter, you face up to one year in county jail. If you are convicted of felony vehicular manslaughter, you face between two and ten years in prison.

You could also be sued civilly by the family of the person(s) you killed for wrongful death and could be liable for significant monetary damages in addition to any criminal punishment as a result of your conviction for this offense.

Contact the California Criminal Defense Attorneys at Wallin & Klarich

If you or someone you care about has been charged with distracted driving while talking/texting, you need to call an attorney at [Wallin & Klarich](#) immediately. At Wallin and Klarich, we have over 30 years of experience successfully defending our clients who have been charged with driving-related crimes. We are familiar with all of the elements that the district attorney must prove in order to convict you of a crime, especially where a death has occurred.

With offices in Los Angeles, Sherman Oaks, Torrance, Tustin, San Diego, Riverside, San Bernardino, Ventura, West Covina and Victorville, the knowledgeable criminal defense attorneys at Wallin & Klarich can help you no matter where you are located. Wallin & Klarich can help you negotiate for reduced charges in order to allow you to avoid jail time, retain your driving privilege and maintain your employment.