

SAFETY Network



Hazardous Action Coding in Fatal/Serious Crashes Raises Concerns

By Michael L. Prince, Director, Office of Highway Safety Planning

A recent review of fatal crash data over the last five years shows that in nearly 1,000 fatal crashes, the driver hazardous action on the crash report is coded as either "Unknown" or "Other." As a result, (driver) hazardous action data from those 1,000 fatal crashes is not being factored into our statewide data analysis. This means that we are making funding, operational, and policy decisions on only 80 percent of the data for driver hazardous actions in fatal crashes. When you factor in serious injury crashes, this number increases to over 8,000 crashes where no hazardous action code is recorded in the crash data system.

The Office of Highway Safety Planning (OHSP) is exploring a more detailed study

of this issue to determine what factors might exist that are causing this. They could include:

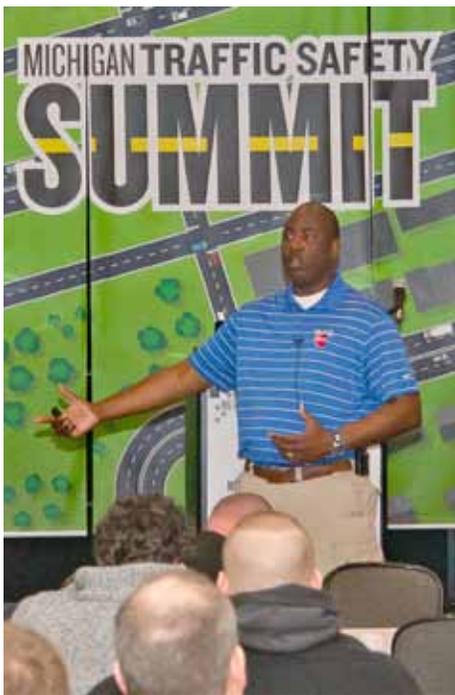
- need for additional training.
- lack of follow-up/reporting to the state.
- need for modifications to the crash report.

In the meantime, Tpr. Scott Carlson from the Michigan State Police Criminal Justice Information Center has agreed to factor this issue into the UD-10 training around the state. OHSP will also share this information with law enforcement agencies so particular attention can be placed on hazardous action codes in fatal and serious crashes.



Upcoming March mobilization

In just a few weeks law enforcement agencies in 26 counties will focus on apprehending impaired drivers during a three-week *Drive Sober or Get Pulled Over* crackdown that runs March 17-April 7. Stepped up enforcement will start St. Patrick's Day and run throughout the college basketball playoffs and finals.



One-day workshops offered in February

HIGH IN PLAIN SIGHT: CURRENT ALCOHOL, DRUG, AND CONCEALMENT TRENDS AND IDENTIFIERS

At 6 feet 9 inches, Ofcr. Jermaine Galloway (a.k.a. Tall Cop) is a nationally and internationally recognized instructor and is well known for his in-depth research on alcohol and drug trends. The Michigan Office of Highway Safety Planning is offering this no-cost workshop for educators, prevention providers, coalition members, law enforcement, probation officers, school administration, treatment, counselors, and parents at four locations throughout the state February 10-13.

The workshop covers alcohol and drug clothing, alcoholic energy drinks, alcopops, alcohol and drug concealment methods and containers, drug paraphernalia, drug-related music and groups, logos, stickers,

new technology, youth party tendencies, party games, non-traditional alcoholic beverages, social networking sites, synthetic drugs, over-the-counter drugs, inhalants, concentrates, electronic cigarettes, and popular party drugs. Participants will learn about common stash compartments that can be used to hide weapons inside everyday clothing containers and other items, along with the relationship between alcohol, drug, and violence tendencies. Officer Galloway tailors this session to each community that he teaches in, and constantly updates this training to keep up with the current trends. For more information, visit: tallcopsaysstop.com

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The Impact in Michigan of *Riley v. California* (Search Warrant Requirement for Cell Phones)

By Kenneth Stecker and Kinga Gorzelewski, Prosecuting Attorneys Association of Michigan (PAAM)

In *Riley v. California*, decided June 25, 2014, the United States Supreme Court unanimously ruled that the warrantless search and seizure of a cell phone's contents during an arrest is unconstitutional. 573 U.S. (2014).

The defendant, David Leon Riley, was arrested after a traffic stop resulted in the discovery of loaded firearms in his car. The officers took Riley's phone and searched his messages, contacts, videos, and photographs. Based on some of the data found on Riley's phone, he was charged with an unrelated shooting that had taken place several weeks prior to his arrest.

In a 9-0 decision, Chief Justice John Roberts delivered the opinion of the Court, ruling that a warrant is required to search a cell phone. *Riley v. California*, 573 U.S., (slip op., at 28).

The Court stated that it fails the warrantless search in *Chimel v. California*, 395 U.S. 752 (1969):

"Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one." Riley v. California, 573 U.S., (slip op., at 10-11).

The Court further stated that cell phones differ in both a quantitative and qualitative sense from other objects in a person's pockets:

"Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they

hold for many Americans 'the privacies of life.' The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought." Riley v. California, 573 U.S., (slip op., at 28).

Although possible evidence stored on a phone may be destroyed with either remote wiping or data encryption, the Court noted as follows:

"In any event, as to remote wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. Such devices are commonly called 'Faraday bags,' after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, lightweight, and easy to use." Riley v. California, 573 U.S., (slip op., at 14).

Although the case is too new for any Michigan appellate cases to have applied its standard and reasoning, there are several points of impact that *Riley* will have on law enforcement in Michigan:

1. "Consent Exception." The "consent" exception to the search warrant requirement remains in effect. In other words, a police officer need not obtain a search warrant if the individual possessing the cell phone voluntarily agrees to permit the officer to view its contents.

2. Tampering with evidence prosecutions. As recognized in *Riley*, there are ways to remotely destroy data on cell phones even after it is seized by law enforcement. An individual who "wipes" or "destroys" data on a cell phone before a search warrant is obtained may be charged with a felony.

In Michigan, such an act may constitute the criminal offense of Tampering with Evidence, pursuant to Michigan Compiled Law 750.483a(5). That section reads "A person shall not do any of the following; (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding."

3. Standing. If the police officer seizing the cell phone suspects that there may be information on it that incriminates a third party would have no standing to challenge the search and seizure of the individual phone.
4. Exigent circumstances. The *Riley* court stated the following: "In light of the availability of the exigent circumstances exception, there is no reason to believe that law enforcement officers will not be able to address some of the more extreme hypotheticals that have been suggested: a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may have information about the child's location on the cell phone." *Riley v. California*, 573 U.S., (slip op., at 26-27).

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Michael Prince presents a retirement plaque to Mike Witter.

Witter retires from NHTSA Region 5

Mike Witter retired at the end of December as regional administrator for the National Highway Traffic Safety Highway Administration (NHTSA) office in Illinois. Witter began his federal government career as an intern and spent 38 years

in safety, working for the Federal Motor Carrier Safety Administration and NHTSA.

He stopped at the Michigan Office of Highway Safety Planning in December where he was presented with a plaque to recognize his distinguished service to safety efforts in Michigan.

PAAM Continued from page 3 >

In conclusion, if a police officer finds herself/himself in a situation where they want to search the cell phone of a suspect, it is important to remember the last sentence of the Riley decision: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple-get a warrant." *Riley v. California*, 573 U.S., (slip op., at 28).

For more information on this article and PAAM training programs, contact Kinga Gorzelewski or Kenneth Stecker, Traffic Safety Resource Prosecutors at (517) 334-6060 or e-mail at steckerk@michigan.gov or gorzelewskik@michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. Discuss your practices that relate to this article with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practice.

Find traffic safety information on Facebook, Twitter

Interested in Michigan traffic safety updates, training opportunities, and other information, then like the Michigan Office

of Highway Safety Planning (OHSP) and the Michigan Center for Truck Safety (MCTS),

which are both now on Facebook. OHSP is also on Twitter @MIOHSP.

What's Ahead

FEBRUARY

- 3 **Michigan Association of Chiefs of Police Traffic Safety Workshop**, Amway Grand Hotel, Grand Rapids
- 3 **Traffic Incident Management Action Team meeting**, Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 9:30 a.m.
- 5 **Drivers Age 24 and Younger Action Team meeting**, Michigan State Police headquarters, 333 S. Grand Ave., Lansing, 1:30 p.m.
- 3-13 **Drug Recognition Expert school**, Crown Plaza Hotel, Lansing
- 10 **High in Plain Sight: Current Alcohol, Drug, and Concealment Trends and Identifiers**, Wayne County Community College District, 21000 Northline Road, Taylor, 9:00 a.m.-3:00 p.m.

- 11 **High in Plain Sight: Current Alcohol, Drug, and Concealment Trends and Identifiers**, Delta Community College, 1961 Delta Road, University Center, 9:00 a.m.-3:00 p.m.
- 12 **High in Plain Sight: Current Alcohol, Drug, and Concealment Trends and Identifiers**, Lansing Community College—West Campus, 5708 Cornerstone Drive, Lansing, 9:00 a.m.-3:00 p.m.
- 13 **High in Plain Sight: Current Alcohol, Drug, and Concealment Trends and Identifiers**, Ottawa County Sheriff's Office, 12220 Fillmore Street, West Olive, 9:00 a.m.-3:00 p.m.

MARCH

- 3 **Governor's Traffic Safety Advisory Commission meeting**, Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 9:00-11:45 a.m.

- 9-13 **Drug Recognition Expert school**, Phoenix, AZ
- 10 **Pedestrian and Bicycle Safety Action Team meeting**, Michigan State Police headquarters, 333 S. Grand Ave., Lansing, 9 a.m.
- 11 **Michigan Truck Safety Commission meeting**, Michigan Center for Truck Safety, 1131 Centennial Way, Lansing, 9 a.m.
- 12 **Senior Mobility and Safety Action Team meeting**, Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 1:30 p.m.
- 17-4/7 **Drive Sober or Get Pulled Over**. state-wide drunk driving crackdown
- 24-26 **Michigan Traffic Safety Summit**, Kellogg Hotel and Conference Center, East Lansing

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Research Shows State's Texting Ban Does Not Reduce Crash Risk

By: University of Michigan Research Institute (UMTRI)

AS SEEN IN UMTRI RESEARCH REVIEW, VOLUME 45, NUMBER 3.

After four years on the books, Michigan's ban on texting while driving does not increase traffic safety, according to research published recently in the *Journal of Adolescent Health*.

Researchers led by Johnathan Ehsani, formerly of UMTRI, analyzed seven years of state crash data spanning before and after the introduction of the state's text messaging restriction to determine the effect of the ban. The team hypothesized that the texting ban would be followed by a reduction in crashes of all severities for drivers aged 16 to 50 years. Instead, they found almost the opposite to be true.

"Michigan's texting restriction did not have a sizable impact on crashes," said Ehsani of the Eunice Kennedy Shriver National Institute of Child Health and Human Development. "Across all age groups, we found that changes in crash rates and trends were small and generally not significant. Of the effects that were significant, most showed an increase in crash risk."

On the positive side, the researchers found significant decreases in less severe crashes, labeled in the state data as possible injury crashes or property damage only crashes.

Nationally, government agencies and safety advocates have endorsed restrictions on cell phone use for talking and texting, including an outright ban for all drivers younger than 18 years of age. To date, over 40 states have passed legislation restricting all cell phone use for 16- and 17-year-old drivers, and at least ten states have restricted handheld cell phone use for all drivers. Michigan's texting ban went into effect in July 2010.

"We thought teen drivers would be most affected by the restrictions," said UMTRI research professor Ray Bingham, co-inves-

tigator of the study. "What we found was that the policy itself is not effective in reducing crash risk. This is consistent with other evaluations of texting bans."

INTERPRETING THE DATA

Results of the study—the small increases in the most severe crash types and the decrease in the least severe crash types—following the introduction of the texting restriction are challenging to interpret in the absence of data on driver behavior.

"It may be that drivers are compensating in a way that distracts them even more," explains Bingham, "but we have no data to indicate what that might be. A good guess is that the ban encourages drivers to engage in other distractions that take their eyes off the road for longer periods at a time."

Bingham, head of UMTRI's Young Driver Behavior and Injury Prevention Group and professor in the U-M School of Public Health, says one thing is certain: legislation alone isn't enough.

"Just passing a ban doesn't do it," says Bingham. "It's never enough just to have a law in place. There are other elements that have to go with it. These include public education and the use of persuasive approaches that encourage the avoidance of all distractions including texting while driving."

The next steps for this line of research, says Bingham, are taking different approaches—possibly conducting driver surveys or analyzing naturalistic driving behavior—to further explore the link between texting restrictions and crash reduction.

For current information on state texting laws, see www.distraction.gov/content/get-the-facts/state-laws.html.

Welcome to the Criminal Justice Information Center Traffic Crash Reporting Unit

The Traffic Crash Reporting Unit (TCRU) is located within the Michigan State Police Criminal Justice Information Center. This unit is responsible for maintaining the central repository for all traffic crash reports (UD-10s) throughout the state.

Approximately 300,000 crash reports are submitted to the unit yearly. Once the unit receives the traffic crash report from the police department, it is run through a set of edits to check for errors. If any errors are identified, they are corrected. All crashes are located on the statewide road framework and are then sent to the Secretary of State to update the driving records.

If the traffic crash involves a fatality, the report is further reviewed by one of the Fatality Analysis Reporting System analysts to assure the crash meets the federal standards for fatal crashes.

The TCRU can run statistical reports for any of the variables located on the UD-10, as well as custom reports that are specific to a police agency. If your department is developing a traffic initiative and needs local crash statistics, please contact the TCRU to assist with that project. Law enforcement agencies can also apply to gain access to the system to run its own reports.

The TCRU has a full-time UD-10 Trainer, Tpr. Scott Carlson, who conducts trainings throughout the state to anyone from the police recruit level, to the veteran officer. Classes are also available for non-law enforcement and civilian employees who review the UD-10s.

Starting in January 2016, the State of Michigan will be implementing a revised UD-10 Traffic Crash Report. To learn more about the new UD-10 or to schedule a training opportunity for your department, please contact Tpr. Scott Carlson at Carlsons1@michigan.gov or call (517) 241-1312.

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