



# Driving While Distracted: Is the Textalyzer the new Breathalyzer?

By **Kelly Wallace, CNN**

🕒 Updated 2:03 PM ET, Fri September 2, 2016

## Story highlights

A New York bill would give officers the authority to use a Textalyzer to investigate distracted driving

If the bill becomes law, it will be the first law of its kind in the country

York.

Evan, then a college freshman, was sitting in the back seat, wearing a seat belt, on his way to work. The driver, a friend of Evan's, said he had fallen asleep, but Lieberman had his doubts. After all, the crash happened during rush hour on a busy, windy road, not in the middle of night on a deserted highway.

Though there was no way to prove what the driver was doing at the exact time of the crash, Lieberman learned that the driver was texting throughout the drive and minutes before the crash, but police never checked his phone.



**Related Article:** Distracted driving: From texts to 'Pokemon Go'

**Editor's Note:** Kelly Wallace is CNN's digital correspondent and editor-at-large covering family, career and life. Read her [other columns](#) and follow her reports at [CNN Parents](#) and on [Twitter @kellywallacetv](#).

**(CNN)** — When Ben Lieberman's son, Evan, was killed in a car crash five years ago, he spent months trying to get the driver's phone records.

"People thought I was crazy, and it was like, 'What are you trying to prove here?'" said Lieberman, of Chappaqua, New

"Once I got the phone records subpoenaed, I was amazed that the phone was sitting in the car for weeks in a junkyard, and they never looked at it," said Lieberman, who was inspired to start an advocacy organization called [Distracted Operators Risk Casualties](#). The driver, who was injured along with two other passengers, lost his license for a year and settled a civil suit with the family. But he never faced criminal charges.

"At first, I thought it was a faulty police investigation," Lieberman said. "What I realized, it's not the case. There's no protocol in place."

If someone runs a red light and hits your car, and the police officer suspects drunken driving, "there is a mechanism right then right there" to prove it, said Lieberman. The officer will

ask the driver to submit to a Breathalyzer test, which can detect the level of alcohol in a person's bloodstream.

"That basically identifies the problem and holds that person accountable," Lieberman said. But there just isn't a similar mechanism in place if a crash occurs and an officer suspects that the driver was using their phone, he said.

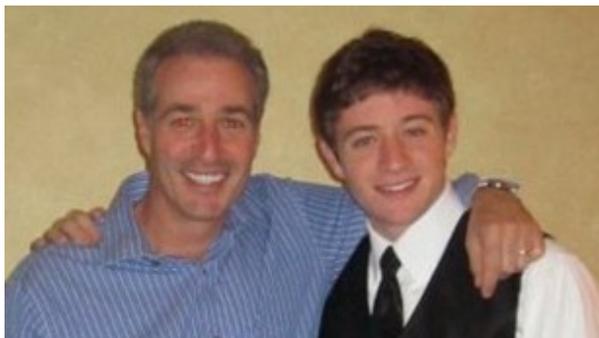


Police must rely on drivers' or witnesses' accounts of cell phone use, and if the facts are in dispute, phone records must be subpoenaed. That can be costly and time-consuming, and can detect only calls and texts, not any Internet-based activity such as social networking or video and music apps. If a driver willingly turns over their phone, there is also the question of whether the officer knows what to look for, as well as the privacy concerns of reviewing someone's personal device.

"I kept hearing time and time again, there's no such thing as a Breathalyzer for distracted driving," Lieberman said. "I got frustrated with that."

**Photos:** Distracted Driving: The vital statistics

## The Textalyzer: A technological solution



Ben Lieberman and his son, Evan.

Determined not to let another parent go through what he and his wife have, Lieberman approached the [mobile forensics company Cellebrite](#), which provides technology to law enforcement to help investigators unlock mobile devices to solve crimes.

Lieberman asked Cellebrite whether there was a way it could dial its technology back, almost "dumb it down," so officers could detect that someone was using their device while driving, but not exactly what they were doing.

"Can we do this in a way to meticulously respect privacy and at the same time give an honest and efficient evaluation?" Lieberman asked executives. "We want a balance of interests. We don't want to be invading anybody's privacy, but you know, you don't want to feel like you're driving on land mines every time you leave your house."

Jim Grady, chief executive officer of Cellebrite Inc. Americas, said that when Lieberman approached his team, they immediately knew there was something they could do to help.

Distracted driving "is a real problem for society," Grady said. "I've got kids, and I don't want my kids to be doing this when they drive. I don't want them to be victims of someone else's driving."

He continued, "We think it's an important problem and that we can help, and that's why we exist, right, to solve big hard problems that are important and that we have the ability to chase."



**Related Article:** The science of distracted driving: Why can't we stop?

With software using Cellebrite's technology, an officer would connect a person's phone to their laptop or other device and detect only the operating system logs, which would provide information about touchscreen use and whether someone was typing at the time of a crash.

"We're specifically designing it to protect the privacy of the user," Grady said, "so it's particularly important not to say who you were texting or what you said in those texts, but instead just the evidence that you were texting and specifically, things like ... the way you hit the keyboard and the frequency."



**Related Article:** Driving While Distracted: Is technology the answer?

Legislation called Evan's Law -- in honor of Lieberman's son -- was introduced in the New York Legislature over the winter and is making its way through the committee process. It would give officers the authority to use a Textalyzer when distracted driving is suspected.

If New York's lawmakers approve the bipartisan measure and it is signed into law, it will be the first of its kind in the country.

"We have optimism that we can do this, but there are certainly roadblocks, and new ideas don't necessarily always get met with the most open minds all the time," Lieberman said.

## Biggest roadblock: Privacy concerns

The biggest of the roadblocks may be from privacy advocates, who worry that the Textalyzer will invite officers to seize personal phones without justification.

To that, Lieberman says his measure would focus on usage over content.

"I don't care what you're on the phone for. It's not my business," he said. "I don't care if you're texting with your mistress. ... I don't care about that. I care about that you were touching your phone, and so usage over content became a very key issue."



**Related Article:** Distracted driving: Beyond technology, how can we stop it?

The bill also follows the Breathalyzer in applying the concept of "implied consent." You could refuse to take a Breathalyzer test if an officer stopped you and suspected that you were impaired, but you could lose your license for doing so. The same theory would apply to the Textalyzer, Lieberman said: You wouldn't go to jail for refusing to submit to a test, but you could lose the privilege afforded to you by the Department of Motor Vehicles in granting you a driver's license.

"Your license is not an entitlement to you. You can't blow through red lights whenever you want," he said. "If you do certain things, the (Department of Motor Vehicles) can take away your license. DMV said you have to take a Breathalyzer test to have the privilege to drive on the road. It's a privilege to drive. It's not a birthright."

## 'The stigma's not there'

The Textalyzer won't single-handedly end distracted driving, concedes Lieberman, but he believes it would increase awareness and raise the stakes, just like the Breathalyzer and drinking and driving laws did to curb drunken driving.

"Once people understood the issue better and people were held accountable and you knew people who lost their licenses ... and you knew people who were injured because of" drinking and driving, "that brought a whole different level of urgency to that whole issue," he said.



Currently, 46 states along with the District of Columbia, Puerto Rico, Guam and the US Virgin Islands have [laws banning texting and driving](#). Fourteen states, along with D.C., Puerto Rico, Guam and the Virgin Islands, [make it a crime to use a handheld device while driving](#).

But the penalties vary by state. In New York, a first offense could result in five driver violation points added to your license, which affects your insurance rates; a 120-day suspension of your license; and a fine as high as \$200, [according to the state's Department of Motor Vehicles](#). Conversely, in South Carolina, you wouldn't lose any points on your license, and [the fine could be as low as \\$25](#), the equivalent of a parking ticket in many parts of the country.

**Related Article:** Parents, beware: These are the 100 deadliest days for teens

Health +

Live TV

### Join the conversation

See the latest news and share your comments with CNN Health on [Facebook](#) and [Twitter](#).

[according to a study](#) (PDF) by the University of Utah, we won't see the shift in stigma that we saw for drinking and driving over the past few decades, Lieberman said.

"The stigma's not there because we don't understand what this can do to us," he said. "Right now, there's a feeling like, 'Yeah, this looks bad, but it's not going to happen to me.' People don't understand that this is actually happening ... and we believe the reason is because it's so under-reported."

What do you think can be done to stop distracted driving? Share your thoughts with [Kelly Wallace on Twitter @kellywallacstv](#).



The new Miss America is ...

Woman charged in plot to attack Paris's Notre Dame Cathedral