



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 6, 2024

RE: OPPOSITION TO SENATE BILL 37 P.N. 1458 (BROWN)

Bill summary: [SB 37](#) (PN 1458) would create a new offense under [Title 75](#) § 3316.1 to prohibit the use of “interactive mobile devices” while driving, graded as a summary offense with a \$50 fine. The offense includes an emergency use exception if necessary to communicate with law enforcement or other emergency services. SB 37 would impose the following additional penalties and enhancements:

- A person convicted of violating [75 § 3732](#) (homicide by vehicle) **and** the new offense created under SB 37 may be sentenced to an additional term of confinement not to exceed five years.
- A person convicted of violating [75 § 3732.1](#) (aggravated assault by vehicle) **and** the new offense created under SB 37 may be sentenced to an additional term of confinement not to exceed two years.
- Requires the PA Commission on Sentencing to create a sentencing enhancement if someone is convicted of either § 3732 or § 3732.1 **and** of using a mobile device while in an active work zone.

SB 37 would supersede and preempt any municipal ordinances with regard to the use of mobile devices. It would also prohibit charging someone concurrently under the new offense and [75 § 3316](#) (prohibiting text-based communications) and would prevent law enforcement from using the offense to take a person’s device via seizure or forfeiture.

Finally, SB 37 would add a new section under Title 75 to require data collection and reporting on traffic stops.

On behalf of over 100,000 members of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 37.

[SB 37 would recklessly expand police power to engage in pretextual traffic stops for a crime that will be difficult to prove.](#)

SB 37 would prohibit drivers from using “an interactive mobile device while driving a motor vehicle.” Using an interactive mobile device is defined as:

1. Using at least one hand to hold, or supporting with another part of the body, an interactive mobile device.
2. Dialing or answering an interactive mobile device by pressing more than a single button.
3. Reaching for an interactive mobile device in a manner that requires a driver to maneuver so that the driver is no longer in a seated driving position, restrained by a seat belt [...].

Unlike the [current offense](#) prohibiting texting and driving, where, for example, timestamps on text exchanges could provide objective evidence to support a charge, proof of violating this new offense would be largely dependent on eyewitness accounts (either by civilians or police) of someone holding or reaching for ... something. This assumes it’s not only possible to see someone holding or reaching for something *while*

moving, but possible to identify *what* the person was holding or reaching for and able to distinguish between a mobile device and an EZ Pass, for example. As such, it strains credulity to believe that violations of this offense are intended to result in convictions. **The only discernible function of SB 37 is a thinly veiled attempt to expand law enforcement’s power to conduct and justify pretextual traffic stops.**

This policing tactic, where officers [stop drivers for minor traffic violations](#) as an excuse or “pretext” to fish for evidence of other potential crimes, is [ineffective](#) as a public safety measure, [disproportionately targets](#) Black and Brown drivers, can result in hefty fines, and for those unable to pay, late fees and possible license suspensions. At its worst, pretextual stops frequently turn lethal. A 2021 [New York Times investigation](#) of traffic stops over a five-year period revealed that police officers killed more than 400 drivers who were neither wielding a gun or knife nor under pursuit for a violent crime—a rate of more than one a week.

Conversely, recent data show that efforts to limit or reduce police traffic stops have [increased public safety](#). In its efforts to address distracted driving, SB 37 would actually make people *less safe* by putting them in greater jeopardy during discretionary—and often dangerous—police traffic stops.

SB 37 would undermine municipal laws intended to reduce police traffic stops in PA.

Philadelphia was the first major U.S. city to pass a [local Driving Equality law](#) to curb police traffic stops. [Philadelphia’s ordinance](#) reclassified [eight vehicle violations](#) as secondary violations, meaning they cannot be the primary reason an officer pulls over a driver. According to Philadelphia police data analyzed by the Defender Association, this law, which took effect in early 2022, has already resulted in a [54 percent reduction](#) in police stops. Pittsburgh followed suit not long after, modeling its [ordinance](#) on Philadelphia’s in reclassifying eight driving violations as secondary. Despite resistance and refusals by Pittsburgh police to follow the law, [efforts to reduce traffic stops in Pittsburgh](#) continue.

Giving police newfound justification to pull people over based on a claim of a driver “pressing more than a single button” on their phone, holding a device, or even reaching for one, would undermine local efforts to find less expensive, more effective, and less lethal ways to enforce low-level traffic violations.

Although SB 37 was amended in the House to add badly needed requirements to collect more traffic stop data, the [data would not be publicly accessible](#) under Pennsylvania’s Right to Know Law. The addition of this required reporting is a grim twist, since the effect of the underlying bill will certainly be an increase in police stops—particularly those that target Black and Brown drivers in Pennsylvania.

For these reasons, we urge you to oppose Senate Bill 37.