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## A proposed 'textalyzer' bill might give cops the right to access your cellphone

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A New York bill that would allow police to use a "textalyzer" device to determine whether drivers have been using their phone at the scene of a car accident is causing concern among some civil liberties groups, who say that it could interfere with people's cellphone privacy.

The proposed bill, which would make New York the first state to use the textalyzer, according to CBS New York, is heavily supported by the Distracted Operators Risk Casualties (DORCs) group, an advocacy organization that promotes preventative legal action for texting-related car accidents.

The textalyzer, which gets its name from the breathalyzer that determines a driver's blood alcohol content, is a roadside device introduced by Cellebrite, an Israeli technology company that specializes in data extraction. The device is a scaled-back version of a more intensive phone-scraping technology created by the company, which promises that the device doesn't give access to personal conversations or apps. Instead, the textalyzer only determines if the phone was in use at the time of the accident, with the option for a more in-depth crawl should the police officer obtain a warrant to search the driver's phone.

"I have often heard there is no such thing as a breathalyzer for distracted driving — so we created one," said DORC co-founder Ben Lieberman in a press statement. "Respecting drivers' personal privacy, however, is also important, and we are taking meticulous steps to not violate those rights."

The bill includes language that gives law enforcement "implied consent" to having one's phone tested at the scene of the crash. Fourth Amendment rights are not violated, they claim, because no actual phone data is being mined by the technology, as reported by Ars Technica.

But some civil liberties groups are skeptical that in practice, use of the textalyzer will be as un-invasive as DORC claims.

"Distracted driving is a serious public safety concern. But this solution is not tailored to the problem," said Donna Lieberman (no relation to DORC's Ben Lieberman), executive director of the New York Civil Liberties Union (NYCLU). "The technology may in fact be scanning through the content of people's phones and collecting data, even if that is not apparent. And even if you finely tune the technology, there are many cases where people will be fined for lawful activity. There are several ways someone could be using a phone in line with distracted driving laws that could run afoul of this test."

Lee Tien, senior staff attorney at the Electronic Frontier Foundation (EFF), agrees that the technology is ripe for misuse.

"I think a law that essentially requires you to hand over your phone to a cop in a roadside situation without a warrant is a non-starter. I know that the supporters of this law talk about how it is designed

to keep police away from these sensitive areas of your life. But really, that's ridiculous. They're human and they stray or make errors in judgment," he said.

Both Lieberman and Tien also mentioned that police officers looking to investigate a driver's phone use can obtain call and texting records with time stamps from phone companies.

"There are existing legal channels for law enforcement to access a phone or phone records if they have grounds to suspect distracted driving has occurred, rather than field-testing every fender bender," said Donna Lieberman.

But textalyzer advocate Ben Lieberman says that in practice, most phone records are never investigated after a car crash. He would know, he said. He got involved with DORC and supporting distracted driving laws after the death of his 19-year-old son in a texting-while-driving incident. After the crash, law enforcement officials did not attempt to obtain phone records until Lieberman himself pursued a search warrant through a civil suit. "It's unrealistic to think that you can get a warrant for every crash," said Ben Lieberman, adding that a warrant is required in order to get records from a phone company.

He emphasized that the bill, which has been dubbed "Evan's Law" after his son, takes careful consideration not to violate privacy rights and that the textalyzer can be used right in front of the driver. "The technology and protocol will protect rights or else it won't work. The last thing I want to do is be responsible for violating anybody's rights. I also don't want to bury another child," he said.

[https://www.washingtonpost.com/news/the-switch/wp/2016/04/13/a-proposed-textalyzer-bill-might-give-cops-the-right-to-access-your-cellphone/?utm\\_term=.d2c93beed2f6](https://www.washingtonpost.com/news/the-switch/wp/2016/04/13/a-proposed-textalyzer-bill-might-give-cops-the-right-to-access-your-cellphone/?utm_term=.d2c93beed2f6)