

# STATE OF NEW YORK

2687--A

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sens. MAYER, BIAGGI, CARLUCCI, HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to creating a pilot program for the field testing of mobile telephones or portable electronic devices by local police departments in Westchester county; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The vehicle and traffic law is amended by adding a new section 1225-e to read as follows:

§ 1225-e. Pilot program for field testing of mobile telephones and portable electronic devices. 1. Purpose. For the county of Westchester, the commissioner shall authorize a two year pilot program for such county to allow local police departments to field test mobile telephones and portable electronic devices following an accident or collision involving damage to real or personal property, personal injury or death. The commissioner shall not require any police department to participate in such program.

2. Definitions. For the purposes of this section:

(a) "Field testing" shall mean the use of an electronic scanning device:

(1) approved and utilized in accordance with rules jointly promulgated by the commissioner and the commissioner of criminal justice services;

(2) approved and certified for use by Westchester county;

(3) used only to scan the log records on the mobile telephone or portable electronic device of the operator of the motor vehicle to determine whether or not the operator of a motor vehicle was using a mobile tele-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 phone or a portable electronic device in violation of section twelve  
2 hundred twenty-five-c or twelve hundred twenty-five-d of this article,  
3 provided, however, that such use of an electronic scanning device shall  
4 be limited to a search of log records that have been activated by typing  
5 or swiping actions on a mobile telephone or electronic portable device  
6 in the prior sixty minutes in determining whether the operator of a  
7 motor vehicle was using a mobile telephone or portable electronic device  
8 in violation of either such section at or near the time of the accident  
9 or collision which provides the grounds for such testing. No such elec-  
10 tronic scan shall access, collect or store user data or the content or  
11 origin of any communication or game conducted, or image or electronic  
12 data viewed, on a mobile telephone or portable electronic device.

13 (b) "Log records" shall mean the log records of keyboard usage, activ-  
14 ity logs and applications logs for mobile telephones and portable elec-  
15 tronic devices. For the purposes of this section, log records shall  
16 include only log records which have been activated by typing or swiping  
17 a mobile telephone or portable electronic device, and shall not include  
18 any log records that were activated by Bluetooth or voice activation  
19 technology.

20 (c) "Mobile telephone" shall mean a mobile telephone as defined in  
21 paragraph (a) of subdivision one of section twelve hundred twenty-five-c  
22 of this article.

23 (d) "Portable electronic device" shall mean a portable electronic  
24 device as defined in paragraph (a) of subdivision two of section twelve  
25 hundred twenty-five-d of this article.

26 (e) "User data" shall mean text messages, contacts, call history,  
27 pictures, videos, files, contents of databases, contents of applica-  
28 tions, names of applications or deleted data.

29 (f) "Using" shall mean:

30 (1) for the purposes of mobile telephones, as defined in paragraph (c)  
31 of subdivision one of section twelve hundred twenty-five-c of this arti-  
32 cle; and

33 (2) for the purposes of portable electronic devices, as defined in  
34 paragraph (b) of subdivision two of section twelve hundred twenty-five-d  
35 of this article.

36 3. Scope of field testing. (a) Every person operating a motor vehicle  
37 which has been involved in an accident or collision involving damage to  
38 real or personal property, personal injury or death, and who has in his  
39 or her possession at or near the time of such accident or collision, a  
40 mobile telephone or personal electronic device, shall at the request of  
41 a police officer, submit his or her mobile telephone and/or portable  
42 electronic device to the police officer solely for the purpose of field  
43 testing such mobile telephone and/or portable electronic device. If such  
44 field testing determines that the operator of the motor vehicle was  
45 using his or her mobile telephone or portable electronic device in  
46 violation of section twelve hundred twenty-five-c or twelve hundred  
47 twenty-five-d of this article, the results of such testing shall consti-  
48 tute evidence of any such violation.

49 (b) The department, Westchester county and any police departments and  
50 their respective agents participating in the pilot program authorized by  
51 this section may store log records collected during electronic scans and  
52 use such log records only to determine the accuracy of field testing and  
53 the prevalence of violations of section twelve hundred twenty-five-c or  
54 twelve hundred twenty-five-d of this article. No user data may be  
55 collected or stored by the department, Westchester county or any police

1 departments or their respective agents participating in the pilot  
2 program authorized by this section.

3 4. Report. At the conclusion of such pilot program, the commissioner  
4 in consultation with the commissioner of criminal justice services shall  
5 assess the program and submit a report to the legislature and the gover-  
6 nor, which shall include, but not be limited to, the impact of the  
7 program on reducing traffic accidents, the amount of phones tested, and  
8 data analyzing the cost, efficiency, and accuracy of the field testing.

9 5. Participation. Participation in the pilot program for the county of  
10 Westchester shall be optional and subject to participation guidelines  
11 established by the commissioner.

12 § 2. This act shall take effect on the ninetieth day after it shall  
13 have become a law and shall expire and be deemed repealed two years  
14 after such date.