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Substitute House Bill No. 5371
As Amended by House Amendment
Schedules "A", "B", "F" and "I"

Approved by the Legislative Commissioner
April 12, 2002

**AN ACT CONCERNING OPERATING A MOTOR VEHICLE WHILE
UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND
RESTRICTING THE USE OF MOBILE TELEPHONES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 14-227a of the general statutes, as amended by
2 section 1 of public act 01-201, is repealed and the following is
3 substituted in lieu thereof (*Effective July 1, 2002*):

4 (a) No person shall operate a motor vehicle while under the
5 influence of intoxicating liquor or any drug or both. A person commits
6 the offense of operating a motor vehicle while under the influence of
7 intoxicating liquor or any drug or both if such person operates a motor
8 vehicle on a public highway of this state or on any road of a district
9 organized under the provisions of chapter 105, a purpose of which is
10 the construction and maintenance of roads and sidewalks, or on any
11 private road on which a speed limit has been established in accordance
12 with the provisions of section 14-218a, or in any parking area for ten or
13 more cars or on any school property (1) while under the influence of
14 intoxicating liquor or any drug or both, or (2) while such person has an

15 elevated blood alcohol content. For the purposes of this section,
16 "elevated blood alcohol content" means (A) a ratio of alcohol in the
17 blood of such person that is [ten-hundredths] eight-hundredths of one
18 per cent or more of alcohol, by weight, or (B) if such person has been
19 convicted of a violation of this subsection, a ratio of alcohol in the
20 blood of such person that is seven-hundredths of one per cent or more
21 of alcohol, by weight.

22 (b) No person shall operate a motor vehicle on a public highway of
23 this state or on any road of a district organized under the provisions of
24 chapter 105, a purpose of which is the construction and maintenance of
25 roads and sidewalks, or on any private road on which a speed limit
26 has been established in accordance with the provisions of section
27 14-218a, or in any parking area for ten or more cars or on any school
28 property while such person's ability to operate such motor vehicle is
29 impaired by the consumption of intoxicating liquor. A person shall be
30 deemed impaired when at the time of the alleged offense the ratio of
31 alcohol in the blood of such person was, for a first violation, more than
32 seven-hundredths of one per cent of alcohol, by weight, but less than
33 [ten-hundredths] eight-hundredths of one per cent of alcohol, by
34 weight, and, for a second or subsequent violation, more than six-
35 hundredths of one per cent of alcohol, by weight, but less than eight-
36 hundredths of one per cent of alcohol, by weight.

37 (c) Except as provided in subsection (d) of this section, in any
38 criminal prosecution for violation of subsection (a) or (b) of this
39 section, evidence respecting the amount of alcohol or drug in the
40 defendant's blood or urine at the time of the alleged offense, as shown
41 by a chemical analysis of the defendant's breath, blood or urine shall
42 be admissible and competent provided: (1) The defendant was
43 afforded a reasonable opportunity to telephone an attorney prior to the
44 performance of the test and consented to the taking of the test upon
45 which such analysis is made; (2) a true copy of the report of the test
46 result was mailed to or personally delivered to the defendant within
47 twenty-four hours or by the end of the next regular business day, after
48 such result was known, whichever is later; (3) the test was performed

49 by or at the direction of a police officer according to methods and with
50 equipment approved by the Department of Public Safety and was
51 performed in accordance with the regulations adopted under
52 subsection (e) of this section; (4) the device used for such test was
53 checked for accuracy in accordance with the regulations adopted
54 under subsection (e) of this section; (5) an additional chemical test of
55 the same type was performed at least thirty minutes after the initial
56 test was performed or, if requested by the police officer for reasonable
57 cause, an additional chemical test of a different type was performed to
58 detect the presence of a drug or drugs other than or in addition to
59 alcohol, provided the results of the initial test shall not be inadmissible
60 under this subsection if reasonable efforts were made to have such
61 additional test performed in accordance with the conditions set forth in
62 this subsection and such additional test was not performed or was not
63 performed within a reasonable time, or the results of such additional
64 test are not admissible for failure to meet a condition set forth in this
65 subsection; and (6) evidence is presented that the test was commenced
66 within two hours of operation. In any prosecution under this section it
67 shall be a rebuttable presumption that the results of such chemical
68 analysis establish the ratio of alcohol in the blood of the defendant at
69 the time of the alleged offense, except that if the results of the
70 additional test indicate that the ratio of alcohol in the blood of such
71 defendant is twelve-hundredths of one per cent or less of alcohol, by
72 weight, and is higher than the results of the first test, evidence shall be
73 presented that demonstrates that the test results and the analysis
74 thereof accurately indicate the blood alcohol content at the time of the
75 alleged offense.

76 (d) In any prosecution for a violation of subdivision (1) of
77 subsection (a) of this section, reliable evidence respecting the amount
78 of alcohol in the defendant's blood or urine at the time of the alleged
79 offense, as shown by a chemical analysis of the defendant's blood,
80 breath or urine, otherwise admissible under subsection (c) of this
81 section, shall be admissible only at the request of the defendant.

82 (e) The Commissioner of Public Safety shall ascertain the reliability

83 of each method and type of device offered for chemical testing and
84 analysis purposes of blood, of breath and of urine and certify those
85 methods and types which said commissioner finds suitable for use in
86 testing and analysis of blood, breath and urine, respectively, in this
87 state. The Commissioner of Public Safety [, in consultation with the
88 Commissioner of Public Health] shall adopt regulations, in accordance
89 with chapter 54, governing the conduct of chemical tests, the operation
90 and use of chemical test devices, the training and certification of
91 operators of such devices and the drawing or obtaining of blood,
92 breath or urine samples as said commissioner finds necessary to
93 protect the health and safety of persons who submit to chemical tests
94 and to insure reasonable accuracy in testing results. Such regulations
95 shall not require recertification of a police officer solely because such
96 officer terminates such officer's employment with the law enforcement
97 agency for which certification was originally issued and commences
98 employment with another such agency.

99 (f) In any criminal prosecution for a violation of subsection (a) or (b)
100 of this section, evidence that the defendant refused to submit to a
101 blood, breath or urine test requested in accordance with section
102 14-227b, as amended by this act, shall be admissible provided the
103 requirements of subsection (b) of said section have been satisfied. If a
104 case involving a violation of subsection (a) of this section is tried to a
105 jury, the court shall instruct the jury as to any inference that may or
106 may not be drawn from the defendant's refusal to submit to a blood,
107 breath or urine test.

108 (g) If a person is charged with a violation of the provisions of
109 subsection (a) of this section, the charge may not be reduced, nolle or
110 dismissed unless the prosecuting authority states in open court such
111 prosecutor's reasons for the reduction, nolle or dismissal.

112 (h) Any person who violates any provision of subsection (a) of this
113 section shall: (1) For conviction of a first violation, (A) be fined not less
114 than five hundred dollars nor more than one thousand dollars, and (B)
115 be (i) imprisoned not more than six months, forty-eight consecutive

116 hours of which may not be suspended or reduced in any manner, or
117 (ii) imprisoned not more than six months, with the execution of such
118 sentence of imprisonment suspended entirely and a period of
119 probation imposed requiring as a condition of such probation that
120 such person perform one hundred hours of community service, as
121 defined in section 14-227e, as amended by this act, and (C) have such
122 person's motor vehicle operator's license or nonresident operating
123 privilege suspended for one year; (2) for conviction of a second
124 violation within ten years after a prior conviction for the same offense,
125 (A) be fined not less than one thousand dollars nor more than four
126 thousand dollars, (B) be imprisoned not more than two years, one
127 hundred twenty consecutive days of which may not be suspended or
128 reduced in any manner, and sentenced to a period of probation
129 requiring as a condition of such probation that such person perform
130 one hundred hours of community service, as defined in section 14-
131 227e, and (C) have such person's motor vehicle operator's license or
132 nonresident operating privilege suspended for three years or until the
133 date of such person's twenty-first birthday, whichever is longer; and
134 (3) for conviction of a third and subsequent violation within ten years
135 after a prior conviction for the same offense, (A) be fined not less than
136 two thousand dollars nor more than eight thousand dollars, (B) be
137 imprisoned not more than three years, one year of which may not be
138 suspended or reduced in any manner, and sentenced to a period of
139 probation requiring as a condition of such probation that such person
140 perform one hundred hours of community service, as defined in
141 section 14-227e, and (C) have such person's motor vehicle operator's
142 license or nonresident operating privilege permanently revoked upon
143 such third offense. For purposes of the imposition of penalties for a
144 second or third and subsequent offense pursuant to this subsection, a
145 conviction under the provisions of subsection (a) of this section
146 [14-227a] in effect on October 1, 1981, or as amended thereafter, a
147 conviction under the provisions of either subdivision (1) or (2) of
148 subsection (a) of this section, a conviction under the provisions of
149 section 53a-56b or 53a-60d or a conviction in any other state of any
150 offense the essential elements of which are determined by the court to

151 be substantially the same as subdivision (1) or (2) of subsection (a) of
152 this section or section 53a-56b or 53a-60d, shall constitute a prior
153 conviction for the same offense.

154 (i) Any person who violates subsection (b) of this section shall be
155 fined not more than two hundred dollars.

156 (j) (1) Each court shall report each conviction under subsection (a) of
157 this section to the Commissioner of Motor Vehicles, in accordance with
158 the provisions of section 14-141. The commissioner shall suspend the
159 motor vehicle operator's license or nonresident operating privilege of
160 the person reported as convicted for the period of time required by
161 subsection (h) of this section. (2) The motor vehicle operator's license
162 or nonresident operating privilege of a person found guilty under
163 subsection (a) of this section who is under eighteen years of age shall
164 be suspended by the commissioner for the period of time set forth in
165 subsection (h) of this section, or until such person attains the age of
166 eighteen years, whichever period is longer. (3) The motor vehicle
167 operator's license or nonresident operating privilege of a person found
168 guilty under subsection (a) of this section who, at the time of the
169 offense, was operating a motor vehicle in accordance with a special
170 operator's permit issued pursuant to section 14-37a shall be suspended
171 by the commissioner for twice the period of time set forth in subsection
172 (h) of this section. (4) Whenever the motor vehicle operator's license of
173 a person is suspended under subsection (h) of this section for
174 conviction of a violation of subsection (a) of this section, the operator's
175 license that is returned or reissued to such person by the
176 Commissioner of Motor Vehicles upon completion of the period of
177 suspension shall indicate on its reverse side that such person is an at-
178 risk operator. For purposes of this subdivision, an "at-risk operator" is
179 a person who has been convicted of a violation of subsection (a) of this
180 section. (5) If an appeal of any conviction under subsection (a) of this
181 section is taken, the suspension of the motor vehicle operator's license
182 or nonresident operating privilege by the commissioner, in accordance
183 with this subsection, shall be stayed during the pendency of such
184 appeal.

185 (k) In addition to any fine or sentence imposed pursuant to the
186 provisions of subsection (h) of this section, the court may order such
187 person to participate in an alcohol education and treatment program.

188 (l) Notwithstanding the provisions of subsection (c) of this section,
189 evidence respecting the amount of alcohol or drug in the blood or
190 urine of an operator of a motor vehicle involved in an accident who
191 has suffered or allegedly suffered physical injury in such accident,
192 which evidence is derived from a chemical analysis of a blood sample
193 taken from or a urine sample provided by such person after such
194 accident at the scene of the accident, while en route to a hospital or at a
195 hospital, shall be competent evidence to establish probable cause for
196 the arrest by warrant of such person for a violation of subsection (a) of
197 this section and shall be admissible and competent in any subsequent
198 prosecution thereof if: (1) The blood sample was taken or the urine
199 sample was provided for the diagnosis and treatment of such injury;
200 (2) if a blood sample was taken, the blood sample was taken in
201 accordance with the regulations adopted under subsection (e) of this
202 section; (3) a police officer has demonstrated to the satisfaction of a
203 judge of the Superior Court that such officer has reason to believe that
204 such person was operating a motor vehicle while under the influence
205 of intoxicating liquor or drug or both and that the chemical analysis of
206 such blood or urine sample constitutes evidence of the commission of
207 the offense of operating a motor vehicle while under the influence of
208 intoxicating liquor or drug or both in violation of subsection (a) of this
209 section; and (4) such judge has issued a search warrant in accordance
210 with section 54-33a, as amended, authorizing the seizure of the
211 chemical analysis of such blood or urine sample. Such search warrant
212 may also authorize the seizure of the medical records prepared by the
213 hospital in connection with the diagnosis or treatment of such injury.

214 (m) If the court sentences a person convicted of a violation of
215 subsection (a) of this section to a period of probation, the court may
216 require as a condition of such probation that such person participate in
217 a victim impact panel program approved by the Court Support
218 Services Division of the Judicial Department. Such victim impact panel

219 program shall provide a nonconfrontational forum for the victims of
220 alcohol-related or drug-related offenses and offenders to share
221 experiences on the impact of alcohol-related or drug-related incidents
222 in their lives. Such victim impact panel program shall be conducted by
223 a nonprofit organization that advocates on behalf of victims of
224 accidents caused by persons who operated a motor vehicle while
225 under the influence of intoxicating liquor or any drug, or both. Such
226 organization may assess a participation fee of not more than twenty-
227 five dollars on any person required by the court to participate in such
228 program.

229 Sec. 2. Section 14-227b of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective July 1, 2002*):

231 (a) Any person who operates a motor vehicle in this state shall be
232 deemed to have given such person's consent to a chemical analysis of
233 such person's blood, breath or urine and, if such person is a minor,
234 such person's parent or parents or guardian shall also be deemed to
235 have given their consent.

236 (b) If any such person, having been placed under arrest for
237 operating a motor vehicle while under the influence of intoxicating
238 liquor or any drug or both or while such person's ability to operate
239 such motor vehicle is impaired by the consumption of intoxicating
240 liquor, and thereafter, after being apprised of such person's
241 constitutional rights, having been requested to submit to a blood,
242 breath or urine test at the option of the police officer, having been
243 afforded a reasonable opportunity to telephone an attorney prior to the
244 performance of such test and having been informed that such person's
245 license or nonresident operating privilege may be suspended in
246 accordance with the provisions of this section if such person refuses to
247 submit to such test or if such person submits to such test and the
248 results of such test indicate that such person has an elevated blood
249 alcohol content, and that evidence of any such refusal shall be
250 admissible in accordance with subsection (f) of section 14-227a, as
251 amended by this act, and may be used against such person in any

252 criminal prosecution, refuses to submit to the designated test, the test
253 shall not be given; provided, if the person refuses or is unable to
254 submit to a blood test, the police officer shall designate the breath or
255 urine test as the test to be taken. The police officer shall make a
256 notation upon the records of the police department that such officer
257 informed the person that such person's license or nonresident
258 operating privilege may be suspended if such person refused to submit
259 to such test or if such person submitted to such test and the results of
260 such test indicated that such person had an elevated blood alcohol
261 content.

262 (c) If the person arrested refuses to submit to such test or analysis or
263 submits to such test or analysis, commenced within two hours of the
264 time of operation, and the results of such test or analysis indicate that
265 such person has an elevated blood alcohol content, the police officer,
266 acting on behalf of the Commissioner of Motor Vehicles, shall
267 immediately revoke and take possession of the motor vehicle
268 operator's license or, if such person is a nonresident, suspend the
269 nonresident operating privilege of such person, for a twenty-four-hour
270 period and shall issue a temporary operator's license or nonresident
271 operating privilege to such person valid for the period commencing
272 twenty-four hours after issuance and ending thirty days after the date
273 such person received notice of such person's arrest by the police
274 officer. The police officer shall prepare a written report of the incident
275 and shall mail the report together with a copy of the completed
276 temporary license form, any operator's license taken into possession
277 and a copy of the results of any chemical test or analysis to the
278 Department of Motor Vehicles within three business days. The report
279 shall be made on a form approved by the Commissioner of Motor
280 Vehicles and shall be subscribed and sworn to under penalty of false
281 statement as provided in section 53a-157b by the arresting officer. If
282 the person arrested refused to submit to such test or analysis, the
283 report shall be endorsed by a third person who witnessed such refusal.
284 The report shall set forth the grounds for the officer's belief that there
285 was probable cause to arrest such person for operating a motor vehicle

286 while under the influence of intoxicating liquor or any drug or both or
287 while such person's ability to operate such motor vehicle is impaired
288 by the consumption of intoxicating liquor, and shall state that such
289 person had refused to submit to such test or analysis when requested
290 by such police officer to do so or that such person submitted to such
291 test or analysis, commenced within two hours of the time of operation,
292 and the results of such test or analysis indicated that such person had
293 an elevated blood alcohol content.

294 (d) If the person arrested submits to a blood or urine test at the
295 request of the police officer, and the specimen requires laboratory
296 analysis in order to obtain the test results, the police officer shall not
297 take possession of the motor vehicle operator's license of such person
298 or, except as provided in this subsection, follow the procedures
299 subsequent to taking possession of the operator's license as set forth in
300 subsection (c) of this section. If the test results indicate that such
301 person has an elevated blood alcohol content, the police officer,
302 immediately upon receipt of the test results, shall notify the
303 Commissioner of Motor Vehicles and submit to the commissioner the
304 written report required pursuant to subsection (c) of this section.

305 (e) Upon receipt of such report, the Commissioner of Motor Vehicles
306 may suspend any license or nonresident operating privilege of such
307 person effective as of a date certain, which date shall be not later than
308 thirty days after the date such person received notice of such person's
309 arrest by the police officer. Any person whose license or operating
310 privilege has been suspended in accordance with this subsection shall
311 automatically be entitled to a hearing before the commissioner to be
312 held prior to the effective date of the suspension. The commissioner
313 shall send a suspension notice to such person informing such person
314 that such person's operator's license or nonresident operating privilege
315 is suspended as of a date certain and that such person is entitled to a
316 hearing prior to the effective date of the suspension and may schedule
317 such hearing by contacting the Department of Motor Vehicles not later
318 than seven days after the date of mailing of such suspension notice.

319 (f) If such person does not contact the department to schedule a
320 hearing, the commissioner shall affirm the suspension contained in the
321 suspension notice for the appropriate period specified in subsection (i)
322 of this section.

323 (g) If such person contacts the department to schedule a hearing, the
324 department shall assign a date, time and place for the hearing, which
325 date shall be prior to the effective date of the suspension. At the
326 request of such person or the hearing officer and upon a showing of
327 good cause, the commissioner may grant one continuance for a period
328 not to exceed fifteen days. If a continuance is granted, the
329 commissioner shall extend the validity of the temporary operator's
330 license or nonresident operating privilege issued pursuant to
331 subsection (c) of this section for a period not to exceed the period of
332 such continuance. The hearing shall be limited to a determination of
333 the following issues: (1) Did the police officer have probable cause to
334 arrest the person for operating a motor vehicle while under the
335 influence of intoxicating liquor or drug or both or while such person's
336 ability to operate such motor vehicle was impaired by the
337 consumption of intoxicating liquor; (2) was such person placed under
338 arrest; (3) did such person refuse to submit to such test or analysis or
339 did such person submit to such test or analysis, commenced within
340 two hours of the time of operation, and the results of such test or
341 analysis indicated that such person had an elevated blood alcohol
342 content; and (4) was such person operating the motor vehicle. In the
343 hearing, the results of the test or analysis shall be sufficient to indicate
344 the ratio of alcohol in the blood of such person at the time of operation,
345 except that if the results of the additional test indicate that the ratio of
346 alcohol in the blood of such person is twelve-hundredths of one per
347 cent or less of alcohol, by weight, and is higher than the results of the
348 first test, evidence shall be presented that demonstrates that the test
349 results and analysis thereof accurately indicate the blood alcohol
350 content at the time of operation. The fees of any witness summoned to
351 appear at the hearing shall be the same as provided by the general
352 statutes for witnesses in criminal cases.

353 (h) If, after such hearing, the commissioner finds on any one of the
354 said issues in the negative, the commissioner shall reinstate such
355 license or operating privilege. If, after such hearing, the commissioner
356 does not find on any one of the said issues in the negative or if such
357 person fails to appear at such hearing, the commissioner shall affirm
358 the suspension contained in the suspension notice for the appropriate
359 period specified in subsection (i) of this section. The commissioner
360 shall render a decision at the conclusion of such hearing or send a
361 notice of the decision by bulk certified mail to such person not later
362 than thirty days or, if a continuance is granted, not later than forty-five
363 days from the date such person received notice of such person's arrest
364 by the police officer. The notice of such decision sent by certified mail
365 to the address of such person as shown by the records of the
366 commissioner shall be sufficient notice to such person that such
367 person's operator's license or nonresident operating privilege is
368 reinstated or suspended, as the case may be. Unless a continuance of
369 the hearing is granted pursuant to subsection (g) of this section, if the
370 commissioner fails to render a decision within thirty days from the
371 date such person received notice of such person's arrest by the police
372 officer, the commissioner shall reinstate such person's operator's
373 license or nonresident operating privilege, provided notwithstanding
374 such reinstatement the commissioner may render a decision not later
375 than two days thereafter suspending such operator's license or
376 nonresident operating privilege.

377 (i) The commissioner shall suspend the operator's license or
378 nonresident operating privilege, and revoke the temporary operator's
379 license or nonresident operating privilege issued pursuant to
380 subsection (c) of this section, of a person who did not contact the
381 department to schedule a hearing, who failed to appear at a hearing or
382 against whom, after a hearing, the commissioner held pursuant to
383 subsection (h) of this section, as of the effective date contained in the
384 suspension notice or the date the commissioner renders a decision,
385 whichever is later, for a period of: (1) (A) Except as provided in
386 subparagraph (B) of this subdivision, ninety days, if such person

387 submitted to a test or analysis and the results of such test or analysis
388 indicated that such person had an elevated blood alcohol content, (B)
389 one hundred twenty days, if such person submitted to a test or
390 analysis and the results of such test or analysis indicated that the ratio
391 of alcohol in the blood of such person was sixteen-hundredths of one
392 per cent or more of alcohol, by weight, or (C) six months if such person
393 refused to submit to such test or analysis, (2) if such person has
394 previously had such person's operator's license or nonresident
395 operating privilege suspended under this section, (A) except as
396 provided in subparagraph (B) of this subdivision, nine months if such
397 person submitted to a test or analysis and the results of such test or
398 analysis indicated that such person had an elevated blood alcohol
399 content, (B) ten months if such person submitted to a test or analysis
400 and the results of such test or analysis indicated that the ratio of
401 alcohol in the blood of such person was sixteen-hundredths of one per
402 cent or more of alcohol, by weight, and (C) one year if such person
403 refused to submit to such test or analysis, and (3) if such person has
404 two or more times previously had such person's operator's license or
405 nonresident operating privilege suspended under this section, (A)
406 except as provided in subparagraph (B) of this subdivision, two years
407 if such person submitted to a test or analysis and the results of such
408 test or analysis indicated that such person had an elevated blood
409 alcohol content, (B) two and one-half years if such person submitted to
410 a test or analysis and the results of such test or analysis indicated that
411 the ratio of alcohol in the blood of such person was sixteen-hundredths
412 of one per cent or more of alcohol, by weight, and (C) three years if
413 such person refused to submit to such test or analysis.

414 (j) Notwithstanding the provisions of subsections (b) to (i),
415 inclusive, of this section, any police officer who obtains the results of a
416 chemical analysis of a blood sample taken from an operator of a motor
417 vehicle involved in an accident who suffered or allegedly suffered
418 physical injury in such accident shall notify the Commissioner of
419 Motor Vehicles and submit to the commissioner a written report if
420 such results indicate that such person had an elevated blood alcohol

421 content, and if such person was arrested for violation of section
422 14-227a, as amended by this act, in connection with such accident. The
423 report shall be made on a form approved by the commissioner
424 containing such information as the commissioner prescribes, and shall
425 be subscribed and sworn to under penalty of false statement, as
426 provided in section 53a-157b, by the police officer. The commissioner
427 may, after notice and an opportunity for hearing, which shall be
428 conducted in accordance with chapter 54, suspend the motor vehicle
429 operator's license or nonresident operating privilege of such person for
430 a period of up to ninety days, or, if such person has previously had
431 such person's operator's license or nonresident operating privilege
432 suspended under this section for a period of up to one year. Each
433 hearing conducted under this subsection shall be limited to a
434 determination of the following issues: (1) Whether the police officer
435 had probable cause to arrest the person for operating a motor vehicle
436 while under the influence of intoxicating liquor or drug or both or
437 while the person's ability to operate the motor vehicle was impaired by
438 the consumption of intoxicating liquor; (2) whether such person was
439 placed under arrest; (3) whether such person was operating the motor
440 vehicle; (4) whether the results of the analysis of the blood of such
441 person indicate that such person had an elevated blood alcohol
442 content; and (5) whether the blood sample was obtained in accordance
443 with conditions for admissibility and competence as evidence as set
444 forth in subsection (l) of section 14-227a, as amended by this act. If,
445 after such hearing, the commissioner finds on any one of the said
446 issues in the negative, the commissioner shall not impose a suspension.
447 The fees of any witness summoned to appear at the hearing shall be
448 the same as provided by the general statutes for witnesses in criminal
449 cases, as provided in section 52-260, as amended.

450 (k) The provisions of this section shall apply with the same effect to
451 the refusal by any person to submit to an additional chemical test as
452 provided in subdivision (5) of subsection (c) of section 14-227a, as
453 amended by this act.

454 (l) The provisions of this section shall not apply to any person

455 whose physical condition is such that, according to competent medical
456 advice, such test would be inadvisable.

457 (m) The state shall pay the reasonable charges of any physician who,
458 at the request of a municipal police department, takes a blood sample
459 for purposes of a test under the provisions of this section.

460 (n) For the purposes of this section, "elevated blood alcohol content"
461 means (1) a ratio of alcohol in the blood of such person that is [ten-
462 hundredths] eight-hundredths of one per cent or more of alcohol, by
463 weight, (2) if such person has been convicted of a violation of
464 subsection (a) of section 14-227a, as amended by this act, a ratio of
465 alcohol in the blood of such person that is seven-hundredths of one per
466 cent or more of alcohol, by weight, or (3) if such person is under
467 twenty-one years of age, a ratio of alcohol in the blood of such person
468 that is two-hundredths of one per cent or more of alcohol, by weight.

469 (o) The Commissioner of Motor Vehicles shall adopt regulations in
470 accordance with chapter 54 to implement the provisions of this section.

471 Sec. 3. Section 14-227c of the general statutes is repealed and the
472 following is substituted in lieu thereof (*Effective July 1, 2002*):

473 As part of the investigation of any motor vehicle accident resulting
474 in a fatality, the Chief Medical Examiner, Deputy Chief Medical
475 Examiner, an associate medical examiner, a pathologist as specified in
476 section 19a-405, or an authorized assistant medical examiner, as the
477 case may be, shall order that a blood sample be taken from the body of
478 any operator or pedestrian who dies as a result of such accident. Such
479 blood samples shall be examined for the presence and concentration of
480 alcohol by the Division of Scientific Services within the Department of
481 Public Safety or by the Office of the Chief Medical Examiner. To the
482 extent provided by law, a blood or breath sample may also be obtained
483 from any surviving operator whose motor vehicle is involved in such
484 an accident. The test shall be performed by or at the direction of a
485 police officer according to methods and with equipment approved by
486 the Department of Public Safety and shall be performed by a person

487 certified or recertified for such purpose by said department or
488 recertified by persons certified as instructors by the Commissioner of
489 Public Safety. The equipment used for such test shall be checked for
490 accuracy by a person certified by the Department of Public Safety
491 immediately before and after such test is performed. If a blood test is
492 performed, it shall be on a blood sample taken by a person licensed to
493 practice medicine and surgery in this state, a qualified laboratory
494 technician, an emergency medical technician II, a registered nurse or a
495 phlebotomist. [as defined in subsection (m) of section 14-227a.] The
496 blood samples obtained from the surviving operator shall be examined
497 for the presence and concentration of alcohol by the Division of
498 Scientific Services within the Department of Public Safety. Nothing in
499 this section or section 19a-406 shall be construed as requiring such
500 medical examiner to perform an autopsy in connection with obtaining
501 such blood samples.

502 Sec. 4. Section 54-56g of the general statutes, as amended by sections
503 2 and 3 of public act 01-201 and section 9 of public act 01-8 of the June
504 special session, is repealed and the following is substituted in lieu
505 thereof (*Effective July 1, 2002*):

506 (a) There shall be a pretrial alcohol education system for persons
507 charged with a violation of section 14-227a, as amended by this act, or
508 14-227g. Upon application by any such person for participation in such
509 system and payment to the court of an application fee of fifty dollars
510 and a nonrefundable evaluation fee of one hundred dollars, the court
511 shall, but only as to the public, order the court file sealed, provided
512 such person states under oath, in open court or before any person
513 designated by the clerk and duly authorized to administer oaths,
514 under penalties of perjury that: (1) If such person is charged with a
515 violation of section 14-227a, as amended by this act, such person has
516 [never] not had such system invoked in such person's behalf [and that]
517 within the preceding ten years for a violation of section 14-227a, as
518 amended by this act, (2) if such person is charged with a violation of
519 section 14-227g, such person has never had such system invoked in
520 such person's behalf for a violation of section 14-227a, as amended by

521 this act, or 14-227g, (3) such person has not been convicted of a
522 violation of section 53a-56b or 53a-60d, a violation of subsection (a) of
523 section 14-227a, as amended by this act, before or after October 1, 1981,
524 or a violation of subdivision (1) or (2) of subsection (a) of section
525 14-227a, as amended by this act, on or after October 1, 1985, and [that]
526 (4) such person has not been convicted in any other state at any time of
527 an offense the essential elements of which are substantially the same as
528 section 53a-56b or 53a-60d or subdivision (1) or (2) of subsection (a) of
529 section 14-227a, as amended by this act. Unless good cause is shown, a
530 person shall be ineligible for participation in such pretrial alcohol
531 education system if such person's alleged violation of section 14-227a,
532 as amended by this act, or 14-227g caused the serious physical injury,
533 as defined in section 53a-3, as amended, of another person. The fee
534 imposed by this subsection shall be credited to the Criminal Injuries
535 Compensation Fund established by section 54-215.

536 (b) The court, after consideration of the recommendation of the
537 state's attorney, assistant state's attorney or deputy assistant state's
538 attorney in charge of the case, may, in its discretion, grant such
539 application. If the court grants such application, it shall refer such
540 person to the Bail Commission for assessment and confirmation of the
541 eligibility of the applicant and to the Department of Mental Health and
542 Addiction Services for evaluation. The Bail Commission, in making its
543 assessment and confirmation, may rely on the representations made by
544 the applicant under oath in open court with respect to convictions in
545 other states of offenses specified in subsection (a) of this section. Upon
546 confirmation of eligibility and receipt of the evaluation report, the
547 defendant shall be referred to the Department of Mental Health and
548 Addiction Services by the Bail Commission for [evaluation and]
549 placement in an appropriate alcohol intervention program for one
550 year. Any person who enters the system shall agree: (1) To the tolling
551 of the statute of limitations with respect to such crime, (2) to a waiver
552 of such person's right to a speedy trial, (3) to [participate in at least]
553 complete ten or fifteen counseling sessions in an alcohol intervention
554 program pursuant to this section [or, if such person was charged with

555 a violation of subdivision (2) of subsection (a) of section 14-227a, where
556 the ratio of alcohol in the blood of such person was sixteen-hundredths
557 of one per cent or more of alcohol, by weight, to participate in at least
558 fifteen counseling sessions in an alcohol program pursuant to this
559 section, and complete the assigned program] dependent upon the
560 evaluation report and the court order, (4) to accept placement in a
561 treatment program upon recommendation of a provider under
562 contract with the Department of Mental Health and Addiction Services
563 pursuant to subsection (d) of this section or placement in a treatment
564 program which has standards substantially similar to, or higher than, a
565 program of a provider under contract with the Department of Mental
566 Health and Addiction Services if the Bail Commission deems it
567 appropriate, and (5) if ordered by the court, to participate in at least
568 one victim impact panel. The suspension of the motor vehicle
569 operator's license of any such person pursuant to section 14-227b, as
570 amended by this act, shall be effective during the period such person is
571 participating in such program, provided such person shall have the
572 option of not commencing the participation in such program until the
573 period of such suspension is completed. If the Bail Commission
574 informs the court that the defendant is ineligible for the system and the
575 court makes a determination of ineligibility or if the program provider
576 certifies to the court that the defendant did not successfully complete
577 the assigned program or is no longer amenable to treatment, the court
578 shall order the court file to be unsealed, enter a plea of not guilty for
579 such defendant and immediately place the case on the trial list. If such
580 defendant satisfactorily completes the assigned program, such
581 defendant may apply for dismissal of the charges against such
582 defendant and the court, on reviewing the record of the defendant's
583 participation in such program submitted by the Bail Commission and
584 on finding such satisfactory completion, shall dismiss the charges. If
585 the defendant does not apply for dismissal of the charges against such
586 defendant after satisfactorily completing the assigned program the
587 court, upon receipt of the record of the defendant's participation in
588 such program submitted by the Bail Commission, may on its own
589 motion make a finding of such satisfactory completion and dismiss the

590 charges. Upon motion of the defendant and a showing of good cause,
591 the court may extend the one-year placement period for a reasonable
592 period for the defendant to complete the assigned program. A record
593 of participation in such program shall be retained by the Bail
594 Commission for a period of seven years from the date of application.
595 The Bail Commission shall transmit to the Department of Motor
596 Vehicles a record of participation in such program for each person who
597 satisfactorily completes such program. The Department of Motor
598 Vehicles shall maintain for a period of seven years the record of a
599 person's participation in such program as part of such person's driving
600 record.

601 (c) At the time the court grants the application for participation in
602 the pretrial alcohol education system, such person shall also pay to the
603 court a nonrefundable program fee of [~~four~~] three hundred twenty-five
604 dollars [or, if such person was charged with a violation of subdivision
605 (2) of subsection (a) of section 14-227a, where the ratio of alcohol in the
606 blood of such person was sixteen-hundredths of one per cent or more
607 of alcohol, by weight, a nonrefundable program fee of six hundred
608 dollars] if such person is ordered to participate in the ten-session
609 program and a nonrefundable program fee of five hundred dollars if
610 such person is ordered to participate in the fifteen-session program,
611 except that no person may be excluded from such program for
612 inability to pay such fee, provided (1) such person files with the court
613 an affidavit of indigency or inability to pay, (2) such indigency is
614 confirmed by the Bail Commission, and (3) the court enters a finding
615 thereof. If the court denies the application, such person shall not be
616 required to pay the program fee. If the court grants the application,
617 and such person is later determined to be ineligible for participation in
618 such pretrial alcohol education system or fails to complete the assigned
619 program, the program fee shall not be refunded. All such evaluation
620 and program fees shall be credited to the pretrial account.

621 (d) The Department of Mental Health and Addiction Services shall
622 contract with service providers, develop standards and oversee
623 appropriate alcohol programs to meet the requirements of this section.

624 Said department shall adopt regulations in accordance with chapter 54
625 to establish standards for such alcohol programs. Any defendant
626 whose employment or residence makes it unreasonable to attend an
627 alcohol program in this state may attend a program in another state
628 which has standards substantially similar to, or higher than, those of
629 this state, subject to the approval of the court and payment of the
630 application, evaluation and program fees as provided in this section.

631 (e) The court may, as a condition of granting such application,
632 require that such person participate in a victim impact panel program
633 approved by the Court Support Services Division of the Judicial
634 Department. Such victim impact panel program shall provide a
635 nonconfrontational forum for the victims of alcohol-related or drug-
636 related offenses and offenders to share experiences on the impact of
637 alcohol-related or drug-related incidents in their lives. Such victim
638 impact panel program shall be conducted by a nonprofit organization
639 that advocates on behalf of victims of accidents caused by persons who
640 operated a motor vehicle while under the influence of intoxicating
641 liquor or any drug, or both. Such organization may assess a
642 participation fee of not more than twenty-five dollars on any person
643 required by the court to participate in such program.

644 Sec. 5. (NEW) (*Effective October 1, 2002*) (a) (1) For purposes of this
645 section, a "hands-free mobile telephone" means a telephone with
646 speakerphone capability or an attachment, add-on or addition to a
647 mobile telephone or other piece of equipment, whether or not
648 permanently installed in the motor vehicle, that when used allows the
649 operator of a motor vehicle to maintain both hands on the steering
650 device.

651 (2) "Mobile telephone" includes, but is not limited to, cellular,
652 analog, wireless and digital telephones capable of sending or receiving
653 telephone communications without an access line for service.

654 (b) On and after January 1, 2003, no person shall use a mobile
655 telephone while a motor vehicle is in motion on a public highway or

656 private road unless such person is using a mobile telephone equipped
 657 with a hands-free device or such person is: (1) An operator who is
 658 alone and reasonably fears for his or her safety or reasonably believes
 659 that a criminal act may be perpetrated against him or her; (2) an
 660 operator who is using such telephone to contact an emergency 911
 661 system to report what such operator reasonably believes is an
 662 emergency or the commission of a crime or motor vehicle violation; (3)
 663 an operator of a school bus with passengers who uses such telephone
 664 to call for assistance when the school bus experiences a mechanical
 665 breakdown or an emergency arises that endangers the operator or the
 666 passengers; or (4) a police officer, peace officer or firefighter or an
 667 operator of an ambulance, authorized emergency vehicle, as defined in
 668 subdivision (4) of subsection (a) of section 14-1 of the general statutes,
 669 bus, school bus without passengers, taxi cab or tow truck who uses
 670 such telephone while acting in the performance of his or her duties and
 671 within the scope of his or her employment.

672 (c) Nothing contained in this section shall prevent any passenger of
 673 a motor vehicle, other than the operator, from using a mobile
 674 telephone while the motor vehicle is in motion.

675 (d) Any violation of this section shall constitute an infraction and be
 676 punishable by a fine not to exceed seventy-five dollars for each
 677 violation. Each such violation shall constitute a separate and distinct
 678 violation.

This act shall take effect as follows:	
Section 1	July 1, 2002
Sec. 2	July 1, 2002
Sec. 3	July 1, 2002
Sec. 4	July 1, 2002
Sec. 5	October 1, 2002

Statement of Legislative Commissioners:

Provisions in subsection (i) of section 1 and in section 2 concerning the offense of operating while impaired, which provisions had been

proposed for deletion, were retained for consistency with the retention of such offense in subsection (b) of section 1 achieved by the adoption of House Amendment Schedule "I".

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Revenue Gain	Judicial Dept	-	Minimal	Minimal
Non-General Fund-Pretrial Account	Mental Health & Addiction Serv., Dept.	-	See Below	See Below
TF - Revenue Gain	Motor Vehicle Dept.	-	22,000	22,000
GF - Cost	Correction, Dept.	-	Potential Significant	Potential Significant
TF - Revenue Impact	Transportation, Dept.	-	See Below	See Below

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact:

Effect	Municipalities	Current FY \$	FY 03 \$	FY 04 \$
Cost	Various Municipalities	-	Potential	Potential

Explanation

The bill lowers the blood-alcohol content (BAC) for defining drunk driving from .10% to .08%. It also retains the offense of driving while impaired (now applicable to someone with a BAC of .07% - .0799%), and prohibits a driver from using a hand-held mobile telephone (with exceptions).

Passage of this bill is not expected to have a significant fiscal impact on the Judicial Department, the Department of Motor Vehicles and on the Department of Mental Health and Addiction Services. However, it could have a potential significant cost impact on the Department of Correction. The cost would depend on the number of additional

offenders placed under its custody.

Moreover, passage of this bill would make the Department of Transportation eligible for incentive grants totaling \$2.8 million (\$1.4 million each for FFY 02 and FFY 03). In addition, the department would not be subject to sanctions of highway construction funds. These sanctions could total approximately \$3.7 million in FFY 04 and approximately \$35 million from FFY 04 through FFY 07.

Judicial Department

The changes outlined above are expected to result in a minimal revenue gain to the state from court fines and fees. It is estimated that an additional 265 individuals would be convicted of drunk driving each year under the bill.

Department of Mental Health and Addiction Services

The bill makes several changes that affect the Pretrial Alcohol Education System (PAES) operated by the Department of Mental Health and Addiction Services (DMHAS). This program provides alcohol education counseling to certain individuals charged with drunk driving, and is supported by participant fees. The change from .10 to .08 BAC level will increase the number of individuals referred to the program, although it is not known how many of the additional 265 individuals charged (estimated above) will be referred to PAES. These additional clients will result in additional program expenses as well as offsetting revenue from fees for the restricted, non-General Fund Pretrial Account operated by DMHAS.

The bill also changes the determination of whether the individual must have ten or fifteen counseling sessions under PAES to a court order rather than the individual's BAC. It is not known to what extent this will change the distribution of individuals assigned to the different number of sessions. Due to uncertainty in the distribution of clients as well as the number of new clients, the additional costs and additional offsetting revenues for the Pretrial Account cannot be determined

The bill also disaggregates the \$100 evaluation fee from the PAES program fee that participants must pay. Since the program fees are reduced by \$100, no net change in revenue is anticipated.

Department of Motor Vehicles

Lowering the BAC standard from .10% to .08% could generate an additional 265 Administrative Per Se cases a year, 110 of which could request hearings. The additional number of Administrative Per Se hearings can be accommodated by the Department of Motor Vehicles (DMV) within existing resources. Assuming 220 of the new cases will have their licenses suspended, the revenue gain to the Transportation Fund from the \$100 license restoration fee could be approximately \$22,000 per year.

Since the bill lowers the BAC standard from .10% to .08%, the department will need to reprogram all hearing notices, suspension notices and hearing decisions. However, the DMV will reallocate the resources of its durational consultant programmers to modify the computer system in-house. Ongoing costs for information technology services from the State Data Center (CATER) in the Department of Information Technology can be handled within normal budgetary resources.

Department of Correction

Lowering the level at which a driver can be convicted of drunk driving would result in more individuals being committed to the Department of Correction (DOC). The number of additional offenders that will be placed in DOC's custody as a result of this bill is unknown, but the costs could be significant. Currently, there are about 250 such offenders in the custody of the department. Annual cost for the incarceration of these offenders is approximately \$5 million to \$6 million per year. Incarceration costs for lower level security inmates ranges between \$60 and \$70 per day or \$24,000 per year.

Incentives and Sanctions Under TEA-21

In accordance with the federal fiscal year (FFY) 2002 Transportation Appropriations Act, if the State of Connecticut enacts a .08% BAC standard by July 1, 2002 (which can become effective September 30, 2002), the state would be eligible to receive incentive grants of approximately \$1.4 million for both FFY 2002 and FFY 2003 for a total of \$2.8 million in incentive grants.

Moreover, if the state does not adopt the .08% BAC standard by FFY 2004, 2% of highway construction funds would be withheld. (Specifically, the Surface Transportation Program (STP), National Highway System (NHS) and Interstate Maintenance programs would be affected.) The penalty increases by 2% each federal fiscal year to 8% in FFY 2007. The first year penalty could be approximately \$3.7 million. Although the Transportation Equity Act for the 21st Century (TEA-21) lasts through FFY 03, projecting sanctions through FFY 07, based on similar authorizations of \$193 million annually for the three programs mentioned above, could approximate a total of \$35 million.

House Amendment "A" made a technical change regarding the adoption of certain regulations by the Department of Public Safety. The amendment also restored current law governing the admissibility of evidence of a defendant's blood alcohol content test refusal. It specifies that statutory requirements must be satisfied for this evidence to be admitted. This change is not expected to result in a fiscal impact.

House Amendment "B" restored the current law separate BAC standard of .07% to define drunk driving for anyone who has a prior drunk driving conviction. This would result in a potential minimal revenue gain from fines because few offenses are anticipated. (There was only one such offense in FY 01.)

House Amendment "F" made the use of a mobile telephone while a motor vehicle is in motion (with exceptions) an infraction that is punishable by a fine of up to \$75. This would result in a revenue gain (net potential state expenditures of about \$120,000 for hands-free mobile telephones for state employees) of approximately \$265,000 per

year. It could result in a minimal cost to municipalities to purchase hands-free mobile telephones for their employees.

House Amendment "I" restored the offense of driving while impaired, which would apply to someone with a BAC of .07% to .0799% under the amended bill. It also lowered the BAC threshold to .06% for determining an infraction of driving while impaired for anyone who has a prior offense for this infraction. These changes would result in a minimal revenue gain.

OLR Amended Bill Analysis

sHB 5371 (as amended by House "A," "B," "F," and "I")*

AN ACT CONCERNING OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND RESTRICTING THE USE OF MOBILE TELEPHONES**SUMMARY:**

This bill (1) makes numerous changes to the laws concerning driving while under the influence of alcohol (DWI) and the related lesser offense of driving while impaired by alcohol and (2) after December 31, 2002, prohibits a driver from using a hand-held mobile telephone, except for certain reasons, while a vehicle is moving on a public highway or private road.

Specifically with respect to the DWI laws, the bill:

1. lowers the current .10% blood-alcohol content (BAC) per se standard for a first offense of DWI to .08% BAC;
2. lowers the threshold for determining the infraction offense of driving while impaired by alcohol for someone who has a previous violation for impairment from .07% to .06% BAC;
3. extends the Pretrial Alcohol Education Program to those under age 21 charged for a first time under the separate "zero tolerance" law that prohibits them from driving with a BAC of .02% or more;
4. allows someone arrested for DWI to participate in the Pretrial Alcohol Education Program once every 10 years, instead of only one time;
5. requires a Department of Mental Health and Addiction Services (DMHAS) evaluation of an alcohol education program applicant before the referral court approves the participation application rather than after, and requires the applicant to pay a nonrefundable \$100 evaluation fee when he applies for the program;
6. eliminates the specific requirement that someone with a BAC of .16% or more participate in a minimum 15-session program, instead of a minimum 10-session program, but maintains authority for requiring a 15-session program based on the evaluation report and court order;

7. adjusts the current program fees to reflect the requirement for the \$100 evaluation fee at the time of application; and
8. eliminates the requirement that the public safety commissioner consult with the public health commissioner when adopting regulations governing the administration of BAC tests, the operation of test devices, training and certification of test device operators, and the drawing of or obtaining blood, breath, or urine samples for determining BAC levels.

*House Amendment "A" (1) eliminates a provision of the original bill that would have allowed evidence of a defendant's BAC test refusal to be admitted in a criminal prosecution for DWI regardless of whether the statutory requirements for requesting and administering BAC tests under the implied consent law have been satisfied and (2) eliminates the current requirement for the public safety commissioner to consult with the public health commissioner when adopting regulations governing BAC test administration, test devices, and those who administer tests.

*House Amendment "B" restores current law requirements for a separate .07% BAC standard for defining DWI for anyone who has a prior DWI conviction, which the original bill eliminated.

*House Amendment "F" adds the prohibition on using hand-held mobile telephones while driving.

*House Amendment "I" restores current law requirements regarding driving while impaired by alcohol that the original bill eliminated and adds the lower .06% threshold for determining impairment for anyone who has a prior offense for this infraction.

EFFECTIVE DATE: July 1, 2002 for the DWI law provisions and October 1, 2002 for the mobile telephone provisions.

DWI LAW CHANGES

BAC Threshold for DWI

It is against the law to drive a motor vehicle (1) while under the influence of alcohol, drugs, or both or (2) with an "elevated blood alcohol content." In the first instance, the offense may be prosecuted with or without any direct evidence of a person's BAC. In the second instance, someone is currently considered to be driving with an elevated BAC if he is found to have a .10% BAC for a first offense; .07% BAC, if he has a previous conviction for drunk driving; or .02% BAC, if

he is under age 21. The bill lowers the standard for a first DWI offense from .10% to .08% BAC.

Driving While Impaired by Alcohol

The bill modifies the thresholds for determining the infraction of driving while impaired for someone who has previously committed this infraction. Currently, someone is considered to have committed the infraction of driving while impaired by alcohol if his BAC level is found to be above .07% but less than .10%. The bill changes this range to more than .07% but less than .08% to reflect the lowering of the standard for determining the DWI offense, but also applies this only to first violations for impairment. If someone has a previous violation for impairment, it lowers the threshold for any second or subsequent impairment violation to .06%

Pretrial Alcohol Education Program

Currently, someone charged with DWI for the first time may apply to the court to participate in the Pretrial Alcohol Education Program. But drivers under age 21 may also be charged under another law if they are found with BACs of .02% or more. All of the DWI penalties apply to such a violation, but the driver is not allowed to apply for the program. The bill eliminates this distinction so drivers under age 21 may qualify for the program if charged with a first offense under either law.

The bill also allows someone charged with DWI (but not someone under age 21 charged under the .02% zero tolerance law) to apply for the program once every 10 years instead of only one time.

Currently, when someone applies for the program he pays a \$50 application fee and the court seals the file. The applicant must swear, among other things, that he has not participated in the program previously. After considering the prosecutor's recommendations, the court may grant the application. The person is then referred to the Bail Commission for assessment and confirmation of eligibility.

Also under current law, once eligibility is confirmed, the applicant is referred to DMHAS for evaluation and placement in an appropriate alcohol program for one year. If the person's BAC was less than .16% he must participate in at least 10 counseling sessions and pay a

nonrefundable \$425 program fee. But, if his BAC was .16% or more, he must participate in a program of at least 15 counseling sessions and pay a \$600 program fee. If he successfully completes the program, he may apply for dismissal of the charges and the court can dismiss them at its discretion.

The bill requires an applicant to pay a nonrefundable \$100 evaluation fee when he applies for consideration for the program. It also requires him to be referred to DMHAS for evaluation at the same time he is referred to the Bail Commission for assessment and confirmation of eligibility, rather than afterward. Also, it requires the Bail Commission to receive the evaluation report before it refers the person to DMHAS for placement in a program and specifies that the program must be an alcohol intervention program.

The bill eliminates the specific requirements for a minimum 15-session program for someone whose BAC is .16% or more, but maintains authority for such a program to be required based on the evaluation report and court order. It reduces the current program fees to \$325 and \$500 respectively, which appears to reflect the fact that the \$100 evaluation fee must be paid at the time of application, instead of at acceptance into the program.

PROHIBITION ON USE OF HAND-HELD MOBILE TELEPHONES WHILE DRIVING

This bill prohibits a driver from using a hand-held mobile telephone while a vehicle is moving on a public highway or private road as of January 1, 2002 except if he is:

1. alone and reasonably fears for his safety or reasonably believes a criminal act may be committed against him;
2. using the telephone to call an emergency 911 system to report what he reasonably believes is an emergency, crime, or motor vehicle violation;
3. driving a school bus with passengers and calling for help due to a mechanical breakdown or emergency that endangers someone on the bus; or
4. a police officer, peace officer, fire fighter, or the driver of an ambulance, authorized emergency vehicle, bus, school bus without passengers, taxicab, or tow truck while performing duties within the scope of his employment.

The prohibition does not apply to a passenger in a vehicle someone else is driving or to a driver when the mobile telephone is equipped with a hands-free device.

By law, an “authorized emergency vehicle” is a fire department vehicle, police vehicle, or a public utility company or municipal department ambulance, or emergency vehicle the motor vehicle commissioner designates or authorizes as an emergency vehicle.

Under the bill, a mobile telephone includes, a cellular, analog, wireless, or digital telephone that can send or receive telephone communications without an access line. A hands-free mobile telephone is one with a speakerphone capability or an attachment, add-on, or addition to a mobile telephone or other piece of equipment that allows the driver to maintain both hands on the steering wheel. It does not necessarily have to be permanently installed in the vehicle.

Each use of a mobile telephone in violation of the prohibition is a separate and distinct violation. Violations are infractions with a maximum fine of \$75.

BACKGROUND

Criminal and Administrative Sanctions for DWI Offenses

The following are the criminal and administrative penalties applicable to drunk driving violations. All sanctions are mandatory.

Drunk Driving-Related Sanctions and Penalties			
Administrative License Sanctions			
	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>
<i>Test Refusal</i>	6 months	1 year	3 years
<i>.02% BAC or higher-under age 21</i>	90 days	9 months	2 years
<i>.07% BAC or higher with prior conviction</i>	90 days	9 months	2 years
<i>.10% BAC or higher</i>	90 days	9 months	2 years
<i>.16% BAC or higher</i>	120 days	10 months	2 years, six months
Criminal Sanctions			

<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>
<p><u>Fine:</u> \$500-\$1,000</p> <p><u>Imprisonment:</u> Six months – 48 hours minimum mandatory OR Suspended sentence with 100 hours of community service</p> <p><u>License Action:</u> One year suspension</p>	<p><u>Fine:</u> \$1,000-\$4,000</p> <p><u>Imprisonment:</u> Two years – 120 days minimum mandatory AND 100 hours of community service</p> <p><u>License Action:</u> Three year suspension (or until age 21 if longer)</p>	<p><u>Fine:</u> \$2,000-\$8,000</p> <p><u>Imprisonment:</u> Three years – one year minimum mandatory AND 100 hours of community service</p> <p><u>License Action:</u> Permanent revocation</p>

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute Change of Reference
Yea 26 Nay 2

Judiciary Committee

Joint Favorable Substitute
Yea 35 Nay 4