CCDLA
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April 2, 2007

Senator Andrew McDonald, Chair
Representative Michael Lawlor, Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

RE: Raised Bill 1348 – An Act Strengthening Drunk Driving Enforcement

Dear Senator McDonald, Representative Lawlor and Members of the Committee:

My name is James Ruane and I am an attorney admitted to practice in Connecticut since 1998. I am a member of the Connecticut Criminal Defense Lawyers Association, a statewide organization of over 300 practicing attorneys who focus on the defense of criminal charges. I myself devote the entirety of my practice to DUI defense, hold certification in the National Highway Traffic Safety Administration Standardized Field Sobriety Tests and I am certified by the US Department of Transportation to administer breath testing on the Intoxilyzer 5000. I currently serve as the Connecticut State Delegate to the National College for DUI Defense, a national organization of DUI defense lawyers.

On behalf of the membership of the CCDLA, I am here to voice our opposition to Raised Bill 1348.

I must begin with the statement that there is not a single member of our organization who is in favor of drunken driving. I am not. The risk to the citizenry of our state is evident in the numerous studies which show the potential consequences that driving drunk poses, both to the offender and the innocent citizens.

But while advocating for stricter laws and enforcement, we must not lose sight of the fundamental principles upon which our state, and our nation was founded. I find it ironic that while our state will broadcast the message "Constitution State" on the license plates of our drivers, we are seeing the possibility of eroding the constitutional principles we so proudly trumpet.

In Raised Bill 1348, there is a proposed change which will enable courts to routinely admit evidence of intoxication when the state has failed to comply with its own regulations for chemical testing, as long as the results were not materially affected. In

essence, we would be saying that in matters of DUI, it isn't necessary for the government to follow the regulations established by the scientists of our state when they set forth the appropriate regulations for breath testing years ago. I myself have encountered this objection in my own cases and the law, as it stands now, has been found to permit the admission of these chemical test results into evidence through the trial court's traditional role of governing which evidence is admissible.

Furthermore, the bill would allow for the forfeiture of motor vehicles of persons with multiple prior DUI convictions. However, there is a lack of parity among the provisions. As it reads, the bill would allow the state to forfeit the automobile of a person who fails the chemical test and holds legal title to the vehicle. If a person were to refuse, but have only "lawful possession," this bill would allow for a similar forfeiture. This lack of equality between the two scenarios is troubling, as many people refuse chemical testing because they have just been advised subsequent to their arrest that they do not have to make any statements and they believe it is best to not take a breath test.

Furthermore, the bill calls for the elimination of a person's right to speak to an attorney during processing for a DUI and prior to the administration of a chemical test. I would submit that this provision could serve to complicate the arrest process and make the job of a police officer much more difficult. I know from personal experience that when I have answered midnight calls from clients in almost all cases I have advised clients to take the chemical tests, and it has enabled the officers to process the arrestees faster and without delay. Often, the arrestee has a myriad of questions, ones which an officer cannot and should not answer. By allowing them to speak to an attorney, it enables us to quickly get the proper information to the client and oftentimes speeds up the process. I cannot tell you how many times I personally been thanked by officers at 3 a.m. for getting them in a position to get the processing completed.

Also, it appears the bill allows for the increase in cost for the Victim Impact Panel. Currently this program is run by community groups like MADD, and I believe that they should be a part of the bill. However, there is no legitimate state interest in increasing the cost from $25 to $100. Many people who are charged with DUI lose their license, and subsequently their job. An increase in this fee could make the program prohibitively expensive. What oversight will there be on these groups? All the current bill serves to do is line the pockets of a private advocacy group.

In addition to the substantive law changes, the proposal shortens the time for a person to request a hearing on a pending administrative suspension from 7 days to 5 days. The shortened window serves no legitimate purposes other than to frustrate the legitimate administrative process. I have had many clients who only receive the notice on the 5th or 6th day of the mailing, and their protected interest may be abrogated based merely on the mail delivery schedule. Furthermore, many attorneys will review a case with a client prior to requesting a hearing to determine if there exists a good faith basis for requesting a hearing. As the bill stands now, an attorney will be compelled to request a hearing within 5 days merely to protect the ability for review without any merit assessment. This bill stands to dramatically increase the numbers of requested hearings statewide.

Finally, the proposed changes to Section 53a-213 indicates that the bill would contain the language "rebuttable presumption" for an open container in an automobile. This is clearly unconstitutional as it shifts the burden to the defendant in a criminal case. Our courts have rejected "rebuttable presumption" language and instructed courts to use the term "permissive inference." I urge you to follow the lead of our Courts and do the same.

No one is in favor of loopholes which allow guilty parties to escape the law. But there is a better way. I think it telling that this bill is proposed to conform with the recommendations of the former Lieutenant Governor's Committee. I attended one of those hearings. Neither I nor any other defense attorney was invited to participate. There is a better way to address the constitutional rights of our citizens and still maintain an aggressive approach to DUI enforcement. We should have videotapes in every station house and every squad car, as exists in most states. We should allow an arrestee to have a sample of blood, breath or urine taken at their expense at the same time as the state tests are taken as exists in most states. We can create post-conviction programs. For example, after a person completes the alcohol education program and receives a first offense conviction, there is usually no follow up with probation and no further counseling or monitoring of probation, as it usually is serviced by an outside monitoring agency. In essence, they do more in a first time program than they do for a conviction. This is wrong. I would urge you to vote against the bill in the current format and would be happy to work with the committee to truly make our DUI laws the model for our nation.

Very truly yours,

James O. Ruane