



STATE OF CONNECTICUT DEPARTMENT OF MOTOR VEHICLES

Rowland State Government Center, 55 West Main Street, Waterbury, CT 06702-2004
<http://dmvct.org>



Testimony of the Department of Motor Vehicles Judiciary Committee Public Hearing April 2, 2007

Raised Bill No. 1348

Good afternoon. For the record, my name is John Yacavone. I am staff legal counsel at the Department of Motor Vehicles (DMV). I am also responsible to manage the Administrative Per Se license suspension program, which DMV conducts in accordance with the provisions of the State's Implied Consent Law, Conn. Gen. Stat. §14-227b.

Raised Bill No. 1348 contains numerous, substantial amendments to our Connecticut statutes that concern the highly dangerous conduct of Driving Under the Influence of Alcohol or Drugs (DUI). The language of this bill is based on a draft bill that was prepared by the office of former Lt. Governor Kevin Sullivan, in conjunction with a statewide task force report that was submitted to the legislature and the public by the former Lt. Governor, last November, entitled "The Sobering Truth: Time to Strengthen Connecticut's Drunk Driving Laws."

DMV does not support all of the sweeping changes in this proposal. While undoubtedly well-intentioned, many of these changes raise problematic, legal issues, as well as issues concerning needs for additional, administrative resources.

Seat Belts Do Save Lives

However, DMV wishes to advise the Committee that some of the amendments contained in this bill are very much worthy of your support, because they would correct existing problems that DMV, as well as the police and prosecutors are compelled to deal with in the actual, day-to-day administration of our DUI programs. These proposed changes are the result of input to the task force that was provided not only by DMV, but by the DUI coordinating prosecutor for the State's Attorneys Office, and the Traffic Services Division of the Division of State Police. Since DMV's primary responsibility is for the Per Se suspension program, we will limit our comments today to those amendments that most directly pertain to our ability to impose license suspensions, where such suspensions are clearly warranted by the facts of the cases presented to us. DMV fully supports the need for these amendments, to enable us to deal fairly and effectively with persons who hold the privilege to drive, but who seriously and dangerously abuse that privilege, by operating over the prescribed BAC limit, or refusing to submit to any chemical testing, after being the subject of a valid arrest for DUI.

Altogether, there are seven (7) such issues that we must bring to your attention. The following is a brief summary of each of the issues. We have taken the liberty to attach to our testimony today a draft of the appropriate bill language, which you may consider at your convenience.

1. Different suspension periods for breath or blood test failures. Currently, subsection (i) of section 14-227b prescribes the periods of the license

suspensions that the Commissioner is required to impose under the Per Se program. These periods of suspension vary, depending on whether there is proof of a test failure or refusal, whether there is a first or subsequent offense and, in the case of a test failure, the actual BAC level of the person arrested. However, subsection (k) of the statute, which deals with blood test results that are obtained by the police in accident and injury cases, also has its own penalty provision. This provision often requires DMV to impose a period of suspension that is different than is otherwise required for other types of testing, under subsection (i). DMV is not aware of any rationale for this differential treatment, from a policy standpoint. More specifically, there is no reason why the suspension period for a blood test failure at a high BAC level should be different than a breath test failure at the same level. The penalty provisions in subsection (k) should simply incorporate, by reference, the provisions of subsection (i).

2. Inability to impose suspensions in fatality cases. In the 2004 session, the legislature authorized DMV to impose a license suspension immediately upon receipt of the police report, and the test failure or refusal evidence, if it is indicated that the driver has been involved in a fatal accident, or has had a previous DUI conviction. In this situation, the driver retains the right to an administrative hearing to contest the action of the Commissioner. However, under another provision of the statute, if DMV does not render a final decision in any Per Se case within 30 days of the date of arrest (or 45 days if the hearing is continued) the Commissioner may not suspend the license. Since its inception in

1990, the dedicated staff of the DMV Per Se program has been able to meet this strict standard set by the legislature, which is sometimes referred to as the “30 Days or You Win Rule.” The problem now is that, in most if not all fatality cases, the required police report and evidence is not submitted immediately because of the time required for a proper investigation. While the statute allows for a later submission, it does not relax the above-mentioned 30 day rule.

If the decision time frame is to continue to be mandated by the statute, (unlike other administrative agency proceedings known to DMV), DMV believes that it should not apply in these types of cases. In other words, the “30 Days or You Win Rule” should not apply where there is a fatality or a prior conviction.

3. Locations Where DUI Can be Committed. Last year, under P.A. 06-147, the legislature removed the statutory standards pertaining to the locations where the offense of DUI can be committed. This change was made in subsection (a) of section 14-227a. However, the language that was deleted from the DUI statute has been retained in Conn. Gen. Stat. § 14-227g, which governs the so-called “zero tolerance” law for drivers who are under twenty-one (21) years of age (See §14-227g(a)). Since the Per Se program administered by DMV applies to drivers of all ages, we are now required to apply a different evidentiary standard for proof on the element of “operation” (which is one of the four issues on which our hearing officers are required to make a finding).

Once again, DMV is not aware of any reason for the difference in standards. We believe the Committee should address the need for consistency

between the relevant provisions of sections 14-227a and 14-227g, concerning the public highway locations, or otherwise, where the prohibitions against DUI will exist.

4. “Relation-back Proof” in Administrative Per Se hearings. Currently, although the general BAC limit that applies to suspensions by the Commissioner under the Per Se program is .08, section 14-227b, subsection (g) contains the following provision:

“In the hearing, the results of the test or analysis shall be sufficient to indicate the ratio of alcohol in the blood of such person at the time of operation, except that if the results of the additional test indicate that the ratio of alcohol in the blood of such person is twelve-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and analysis thereof accurately indicate the blood alcohol content at the time of operation.”

This provision establishes a requirement for what is known as “relation-back proof” (also sometimes referred to as “retrograde extrapolation”). These terms refer to a scientific analysis of given BAC test results as these relate to the time at which the person arrested for DUI was observed to be operating a motor vehicle. In other words, it is assumed that, even if a person has failed a chemical alcohol test that is taken at the police station, at some point in time after a DUI

arrest has been made, it is possible that, at the time of operation, the same person was not over the limit. Thus, the courts have allowed the so-called "relation-back defense," which then requires the State to introduce expert testimony, based on all of the physiological and other factors involved, to establish with some degree of certainty that the defendant was actually operating over the presumptive, legal limit.

It must be kept in mind that, under the Administrative Per Se program, the Commissioner of Motor Vehicles is not required to prove the offense of DUI. The Commissioner's action to impose a driver's license suspension is based on the failure of a driver to pass a chemical alcohol test, or on a refusal to undergo testing. Therefore, it is DMV's position that the above-quoted provision simply has no place in the Per Se statute. Section 14-227b also contains a requirement that, for the test results to be admissible in the administrative hearing, there must be evidence that the testing procedure was commenced within two hours of the time of operation. This two-hour requirement is a sufficient safeguard that the test results have a clear nexus to the operation of a motor vehicle. The additional requirement that is imposed by the above-quoted "relation-back" provision, which may require the expert testimony of a toxicologist to satisfy, is unnecessary, and serves only to establish, in effect, a different BAC standard than the .08 standard for many Per Se cases.

5. Definition of "elevated blood alcohol content" for Drivers of Commercial Trucks and Buses. Under the definition contained in subsection (o) of section 14-227b,

the BAC limits for the purposes of the Administrative Per Se program are .08 for drivers over the age of twenty-one, and .02 for younger drivers. There is no reference to the .04 standard that has been adopted by the U.S. Federal Motor Carrier Safety Administration for drivers of "commercial motor vehicles" (CMVs), which are defined by federal law and in Conn. Gen. Stat. §14-1(a)(13).

Connecticut and all other states are required to apply the .04 standard to operators of these vehicles, as a condition to receive federal highway funds. In order to meet and satisfy the federal highway assistance mandate in this area, the legislature has adopted the provisions of Conn. Gen. Stat. §14-44k(c). This section authorizes the Commissioner to impose a commercial driver's license (CDL) disqualification on a CMV driver who tests out at .04, or higher, while operating a CMV. While this somewhat "back door", statutory approach to applying the national .04 standard for operation of CMVs has not, up to this point in time, been successfully challenged, the absence of the .04 standard in Conn. Gen. Stat. §14-227b, as well as in §14-227a, raises several potential legal issues. The current arrangement also complicates DMV's efforts to administer these statutes together, since, depending on the BAC level, a driver who is subject to a one-year CDL disqualification may or may not be subject to any license suspension.

DMV recognizes that the adoption of a .04 standard for the commission of DUI in a CMV is not a technical matter, of the same type as the other issues discussed in this testimony, but requires the legislature to make a determination of public policy. However, in this instance, DMV agrees with the Sullivan task

force report, that Connecticut should clearly and unambiguously adopt the .04 BAC standard for drivers of heavy trucks, buses and other student transportation vehicles, and hazardous materials carriers (all of which are included in the above-mentioned, existing definition of "commercial motor vehicle").

6. Electronic reports and records. The State of Connecticut has been conducting a project, under the auspices of a grant from the federal National Highway Traffic Safety Administration (NHTSA) to convert its written traffic records, including citations and arrest reports, to an electronic format for electronic transmission. The agencies participating in this project, including DMV, DOT, DPS and the Office of Policy and Management (OPM) are requesting an amendment to the statute to authorize (but not require) the police officer's DUI arrest report (Form A-44) to be transmitted to DMV electronically, for data entry purposes. This initiative has potential for significant long-term time and cost savings for state and municipal agencies.

7. Incorrect cross-reference. The cross-reference in subsection (k) of the statute should be to subsection (k) of section 14-227a.

In conclusion, DMV believes that if the Committee were to address these issues, there would be a significant strengthening of our ability to meet the common sense and good sense objectives of the Per Se suspension program. I would be pleased to answer any questions that you may have.

DMV RECOMMENDED CHANGES

4/2/07

Sec. 1. Section 14-227b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

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

(b) If any such person, having been placed under arrest for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both, and thereafter, after being apprised of such person's constitutional rights, having been requested to submit to a blood, breath or urine test at the option of the police officer, having been afforded a reasonable opportunity to telephone an attorney prior to the performance of such test and having been informed that such person's license or nonresident operating privilege may be suspended in accordance with the provisions of this section if such person refuses to submit to such test or if such person submits to such test and the results of such test indicate that such person has an elevated blood alcohol content, and that evidence of any such refusal shall be admissible in accordance with subsection (e) of section 14-227a and may be used against such person in any criminal prosecution, refuses to submit to the designated test, the test shall not be given; provided, if the person refuses or is unable to submit to a blood test, the police officer shall designate the breath or urine test as the test to be taken. The police officer shall make a notation upon the records of the police department that such officer informed the person that such person's license or nonresident operating privilege may be suspended if such person refused to submit to such test or if such person submitted to such test and the results of such test indicated that such person had an elevated blood alcohol content.

(c) If the person arrested refuses to submit to such test or analysis or submits to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicate that such person has an elevated blood alcohol content, the police officer, acting on behalf of the Commissioner of Motor Vehicles, shall immediately revoke and take possession of the motor vehicle operator's license or, if such person is a nonresident, suspend the nonresident operating privilege of such person, for a twenty-four-hour period. The police officer shall prepare a [written] report of the incident and shall mail or

transmit the report and a copy of the results of any chemical test or analysis to the Department of Motor Vehicles within three business days. The report shall [be made on a form approved by] contain such information as prescribed by the Commissioner of Motor Vehicles and shall be subscribed and sworn to under penalty of false statement as provided in section 53a-157b by the arresting officer. If the person arrested refused to submit to such test or analysis, the report shall be endorsed by a third person who witnessed such refusal. The report shall set forth the grounds for the officer's belief that there was probable cause to arrest such person for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both and shall state that such person had refused to submit to such test or analysis when requested by such police officer to do so or that such person submitted to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that such person had an elevated blood alcohol content. The commissioner may accept a report that is prepared and transmitted as an electronic record and that bears an electronic signature or signatures, subject to such requirements concerning security procedures as the commissioner may direct. As used in this subsection, the terms "electronic", "electronic record", "electronic signature", and "security procedure" have the meanings set forth in section 1-267.

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

(e) (1) Except as provided in subdivision (2) of this subsection, upon receipt of such report, the Commissioner of Motor Vehicles may suspend any license or nonresident operating privilege of such person effective as of a date certain, which date shall be not later than thirty days after the date such person received notice of such person's arrest by the police officer. Any person whose license or operating privilege has been suspended in accordance with this subdivision shall automatically be entitled to a hearing before the commissioner to be held prior to the effective date of the suspension. The commissioner shall send a suspension notice to such person informing such person that such person's operator's license or nonresident operating privilege is suspended as of a date certain and that such person is entitled to a hearing prior to the effective date of the suspension and

may schedule such hearing by contacting the Department of Motor Vehicles not later than seven days after the date of mailing of such suspension notice.

(2) If the person arrested (A) is involved in an accident resulting in a fatality, or (B) has previously had such person's operator's license or nonresident operating privilege suspended under the provisions of section 14-227a during the ten-year period preceding the present arrest, upon receipt of such report, the Commissioner of Motor Vehicles may suspend any license or nonresident operating privilege of such person effective as of the date specified in a notice of such suspension to such person. Any person whose license or operating privilege has been suspended in accordance with this subdivision shall automatically be entitled to a hearing before the commissioner. The commissioner shall send a suspension notice to such person informing such person that such person's operator's license or nonresident operating privilege is suspended as of the date specified in such suspension notice, and that such person is entitled to a hearing and may schedule such hearing by contacting the Department of Motor Vehicles not later than seven days after the date of mailing of such suspension notice. Any suspension issued under this subdivision shall remain in effect until such suspension is affirmed or such license or operating privilege is reinstated in accordance with subsections (f) and (h) of this section.

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

(g) If such person contacts the department to schedule a hearing, the department shall assign a date, time and place for the hearing, which date shall be prior to the effective date of the suspension, except that, with respect to a person whose license or nonresident operating privilege is suspended in accordance with subdivision (2) of subsection (e) of this section, such hearing shall be scheduled not later than thirty days after such person contacts the department. At the request of such person or the hearing officer and upon a showing of good cause, the commissioner may grant one continuance for a period not to exceed fifteen days. The hearing shall be limited to a determination of the following issues: (1) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis or did such person submit to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that such person had an elevated blood alcohol content; and (4) was such person operating the motor vehicle. In the hearing, the results of the test or analysis shall be sufficient to indicate the ratio of alcohol in the blood of such person at the time of operation, [except that if the results of the

additional test indicate that the ratio of alcohol in the blood of such person is twelve-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and analysis thereof accurately indicate the blood alcohol content at the time of operation] provided that evidence is presented that the test or analysis was commenced not later than two hours after the time of operation. The fees of any witness summoned to appear at the hearing shall be the same as provided by the general statutes for witnesses in criminal cases.

(h) If, after such hearing, the commissioner finds on any one of the said issues in the negative, the commissioner shall reinstate such license or operating privilege. If, after such hearing, the commissioner does not find on any one of the said issues in the negative or if such person fails to appear at such hearing, the commissioner shall affirm the suspension contained in the suspension notice for the appropriate period specified in subsection (i) or (j) of this section. The commissioner shall render a decision at the conclusion of such hearing or send a notice of the decision by bulk certified mail to such person. The notice of the decision shall be sent not later than thirty days or, if a continuance is granted, not later than forty-five days from the date such person received notice of such person's arrest by the police officer, except in the case of a hearing decision rendered for the suspension imposed under subdivision 2 of subsection (e) of this section. The notice of such decision sent by certified mail to the address of such person as shown by the records of the commissioner shall be sufficient notice to such person that such person's operator's license or nonresident operating privilege is reinstated or suspended, as the case may be. Unless a continuance of the hearing is granted pursuant to subsection (g) of this section, if the commissioner fails to render a decision within thirty days from the date such person received notice of such person's arrest by the police officer, the commissioner shall reinstate such person's operator's license or nonresident operating privilege, provided notwithstanding such reinstatement the commissioner may render a decision not later than two days thereafter suspending such operator's license or nonresident operating privilege. Failure to render a decision within thirty days of an arrest shall not result in a reinstatement of the operator's license or nonresident operating privilege of a person who is suspended pursuant to subdivision 2 of subsection (e) of this section.

(i) Except as provided in subsection (j) of this section, the commissioner shall suspend the operator's license or nonresident operating privilege of a person who did not contact the department to schedule a hearing, who failed to appear at a hearing or against whom, after a hearing, the commissioner held pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice or the date the commissioner renders a decision, whichever is later, for a

period of: (1) (A) Except as provided in subparagraph (B) of this subdivision, ninety days, if such person submitted to a test or analysis and the results of such test or analysis indicated that such person had an elevated blood alcohol content, (B) one hundred twenty days, if such person submitted to a test or analysis and the results of such test or analysis indicated that the ratio of alcohol in the blood of such person was sixteen-hundredths of one per cent or more of alcohol, by weight, or (C) six months if such person refused to submit to such test or analysis, (2) if such person has previously had such person's operator's license or nonresident operating privilege suspended under this section, (A) except as provided in subparagraph (B) of this subdivision, nine months if such person submitted to a test or analysis and the results of such test or analysis indicated that such person had an elevated blood alcohol content, (B) ten months if such person submitted to a test or analysis and the results of such test or analysis indicated that the ratio of alcohol in the blood of such person was sixteen-hundredths of one per cent or more of alcohol, by weight, and (C) one year if such person refused to submit to such test or analysis, and (3) if such person has two or more times previously had such person's operator's license or nonresident operating privilege suspended under this section, (A) except as provided in subparagraph (B) of this subdivision, two years if such person submitted to a test or analysis and the results of such test or analysis indicated that such person had an elevated blood alcohol content, (B) two and one-half years if such person submitted to a test or analysis and the results of such test or analysis indicated that the ratio of alcohol in the blood of such person was sixteen-hundredths of one per cent or more of alcohol, by weight, and (C) three years if such person refused to submit to such test or analysis.

(j) The commissioner shall suspend the operator's license or nonresident operating privilege of a person under twenty-one years of age who did not contact the department to schedule a hearing, who failed to appear at a hearing or against whom, after a hearing, the commissioner held pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice or the date the commissioner renders a decision, whichever is later, for twice the appropriate period of time specified in subsection (i) of this section.

(k) Notwithstanding the provisions of subsections (b) to (j), inclusive, of this section, any police officer who obtains the results of a chemical analysis of a blood sample taken from an operator of a motor vehicle involved in an accident who suffered or allegedly suffered physical injury in such accident or who is otherwise deemed by a police officer to require hospital treatment or observation, shall notify the Commissioner of Motor Vehicles and submit to the commissioner a [written] report if such results indicate that such person had an elevated blood alcohol content, and if such person was arrested for violation of section 14-227a, as amended by this act, in connection with such accident or

incident requiring hospital treatment or observation. The report shall be made on a form approved by the commissioner containing such information as the commissioner prescribes, and shall be subscribed and sworn to under penalty of false statement, as provided in section 53a-157b, by the police officer. The commissioner may, after notice and an opportunity for hearing, which shall be conducted in accordance with chapter 54, suspend the motor vehicle operator's license or nonresident operating privilege of such person for [a period of up to ninety days, or, if such person has previously had such person's operator's license or nonresident operating privilege suspended under this section for a period of up to one year] the appropriate period specified by subsection (i) or (j) of this section. Each hearing conducted under this subsection shall be limited to a determination of the following issues: (1) Whether [the police officer had probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or drug or both; (2) whether] such person was placed under arrest for a violation of section 14-227a, as amended by this act; [(3)] (2) whether such person was operating the motor vehicle; [(4)] (3) whether the results of the analysis of the blood of such person indicate that such person had an elevated blood alcohol content; and [(5)] (4) whether the blood sample was obtained in accordance with conditions for admissibility and competence as evidence as set forth in subsection [(j)] (k) of section 14-227a, as amended by this act. If, after such hearing, the commissioner finds on any one of the said issues in the negative, the commissioner shall not impose a suspension. The fees of any witness summoned to appear at the hearing shall be the same as provided by the general statutes for witnesses in criminal cases, as provided in section 52-260.

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

(m) The provisions of this section shall not apply to any person whose physical condition is such that, according to competent medical advice, such test would be inadvisable.

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

(o) For the purposes of this section, "elevated blood alcohol content" means (1) a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, [or] (2) if such person is operating a commercial motor vehicle, a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight, or (3) if such

person is under twenty-one years of age, a ratio of alcohol in the blood of such person that is two-hundredths of one per cent or more of alcohol, by weight.

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

Section 2. Subsection (a) of section 14-227g of the general statutes is repealed and the following is substituted in lieu thereof:

(a) No person under twenty-one years of age shall operate a motor vehicle [on a public highway of this state or any road of a district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or on any private road on which a speed limit has been established in accordance with the provisions of section 14-218a, or in any parking area for ten or more cars or on any school property] while the ratio of alcohol in the blood of such person is two-hundredths of one per cent or more of alcohol, by weight.