

TESTIMONY

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JUDICIARY COMMITTEE

PUBLIC HEARING

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RAISED SENATE BILL 1433  
AN ACT STRENGTHENING DRUNK DRIVING  
ENFORCEMENT

1348  
Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for this opportunity to testify in support of Senate Bill 1433. This legislation comes to you from the Public Safety Committee as a major strengthening of enforcement, treatment and penalties for driving under the influence alcohol, drugs or both, and is the result of a working group that I pulled together during my final year as Lt. Governor.

Our working group brought together representatives from the Departments of Public Safety, Motor Vehicles and Transportation, Chief Court Administrator and State's Attorney, Connecticut Police Chiefs' Association, Mothers Against Drunk-Driving and legislative members including Sen. Stillman and Sen. Kissel. Our report, "*The Sobering Truth*," recognizes that driving is a privilege, not a right. That is why Connecticut enacted what was supposed to be a relatively simple administrative process for primary enforcement. Instead, we found the following:

- Connecticut's continued rating among the "Fatal 15" worst states in the nation in terms of the incidence of DUI-related fatalities.
- Clear evidence that most drunk and drugged driving is habitual.
- Bureaucratic burdens on police enforcement, unclear coordination between state agencies and the courts, and chronic understaffing at the state level.
- Administrative per se enforcement that is unnecessarily and inappropriately litigious.
- Relatively weak penalties for habitual offenders.
- No required treatment to help offenders actually break the cycle.

Copies of our full report are available but let me just focus on the key reforms proposed in SB 1433:

- **Expedite and strengthen administrative per se enforcement.** The first-line defense of suspending driving privileges for DUI is anything but a basic, uniform administrative procedure. It is unnecessarily and inappropriately, a mini-criminal trial, a fishing expedition for the real criminal trial that often follows and a real disincentive to law enforcement. A few changes will make a big difference:
  - Expressly clarify the authority of DMV hearing officers and that the hearings are Chapter 54 UAPA procedures.
  - Reduce the time for requesting a hearing from 7 to 5 days.
  - Strictly limit the scope of hearings to documentary evidence provided in the required police record and determination of the 3 material issues (arrest, refusal to test or elevated blood alcohol and operating the vehicle) but not the current quasi-criminal showing of “probable cause.”
  - Require that the parties in the hearing pay any witness fees since this is not a criminal proceeding.
  - Continue to reinstate driving privileges if a decision is not rendered within 30 days but extend from 2 to 7 days the time thereafter that DMV may render a decision and suspend.
- **Strengthen criminal enforcement.** Constitutional rights require much more procedural protection here, but three changes are recommended:
  - Eliminate the exclusion of second sobriety testing discrepancy from the standard rebuttable presumption.
  - Allow the state or defendant to put in lawfully available blood, urine or breath sobriety testing evidence.
  - Allow technically non-complying sobriety testing results to be admitted by the court for good cause where the test results are not materially affected.
- **Reduce administrative burdens on law enforcement.** Bureaucratic burdens on enforcement allow too many drunk drivers to continue to drive drunk. Under new leadership, DMV has improved communication with law enforcement but clearer statutory procedures are still needed. And remember here that the usual constitutional protect incident to lawful arrest are a condition precedent anyway. Recommended reforms include:

- As recommended by the State Toxicologist, have the required second sobriety done within 10 rather than 30 minutes -- a scientifically reliable measure that is also 20 minutes less time to sober up before testing.
  - Since sobriety testing is incident to lawful arrest anyway, there is no reason for the added burden and probable delay of any further warnings.
  - Give the arresting officer 5 rather than 3 days to report to DMV.
  - Require DMV to advise the arresting officer within 10 days of specific reporting errors that can be corrected for timely resubmission.
  - As recommended by DMV, allow electronic reporting in accordance with existing state standards.
- **Clarify court authority.** In a number of cases, enforcement drops through the cracks when criminal sentencing and DMV implementation are not coordinated:
    - Clarify direct court authority to impose license suspension and revocation as well as allowing courts to impose such penalties that may be longer than allowed under DMV's administrative per authority.
    - Require that courts notify DMV within 48 hours rather than 5 days of any criminal suspension or revocation – because a lot can happen or get lost in 5 days.
- **Set tougher penalties for habitual violators.** SB 1348 generally increases criminal and administrative penalties but that is not essential to the needed legislation except for habitual and very serious offenses. Especially because Connecticut effectively allows a free pass for first-time violators, we should:
    - Eliminate the 10-year look back limitation that only resets the doomsday clock with habitual offenders.
    - Set tougher penalties at least after any third and subsequent offense as well as in cases fatality, violation of suspension or revocation, work permit violation, tampering or evading required ignition interlocks and the DUI-related crimes of persistent operating, manslaughter with a motor vehicle, and assault second with a motor vehicle. In some or all such cases, also add the penalty of vehicle forfeiture with proceeds to benefit the Criminal Injuries Compensation Fund.
    - Raise the BAC standard to the federal .04 requirement for commercial operators and to effectively zero tolerance at .02 for minors.
    - Do not stay suspensions or revocations on appeal.

- **Require effective treatment and prevention.** Under current law, all referral for counseling and treatment is discretionary. To help break the DUI cycle:
  - Require referral to professional mental health treatment, including addiction, for second and subsequent offenses.
  - Strengthen DMHAS oversight of treatment standards.
  - Eliminate the current ability to appeal counseling and treatment referrals.
  
- **Adopt an “open container” law.** (SB 1348) proposes a rebuttable presumption standard be added to the existing crime of drinking while driving under Section 53a-213. This may gain the benefits of an “open container” law without triggering the perverse disincentive of shifting back federal highway penalty dollars from enforcement to maintenance. Whether you choose this or a broader ban, please remember to include budget language assuring that highway safety enforcement expenditures will not held harmless.

While not within the scope of the proposed legislation, our report urges future attention in a few more areas of concern:

- Reexamine the current one-free-pass standard at least for purposes of determining penalties for subsequent violations.
- Provide that all DUI fines be allocated back to the arresting authority, including our own state police.
- Allow state and local authorities to assess drunk and drugged drivers for the extraordinary costs of emergency response.
- Recognize that, as those who have seen the movie *The Forty Year Old Virgin* know, that current breath-activated interlock systems are easy to evade and require Connecticut to follow the lead of other states in moving toward personally identifiable biometrics instead.

Please do not let another legislative session pass without meaningful action. Current looks far tougher on paper than it is in practice. Please understand the sobering truth of so many people being killed or severely injured for life by drunk and drugged drivers. And remember that the life you save may be the life on someone you love or it may even be your own.

Thank you.