



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Transportation – March 4, 2009

- S.B. No. 152 An Act Prohibiting Open Alcoholic Beverage Containers in Motor Vehicles
- S.B. No. 1054 An Act Prohibiting Open Containers of Alcohol in Motor Vehicles
- H.B. No. 6601 An Act Concerning the Administrative Per Se Program

The Division of Criminal Justice appreciates the opportunity to present testimony to the Committee on the following bills on the agenda for today's public hearing. By way of background, the Division of Criminal Justice includes the Office of the Chief State's Attorney and the State's Attorneys who are responsible for the prosecution of all motor vehicle cases, including driving under the influence, in this state.

The Division enthusiastically supports the concept of an "open container" law as advanced in S.B. No. 152 and S.B. No. 1054. The addition of an open container law to the arsenal of tools to combat drunken driving is long overdue. The Division would caution the Committee to proceed with extreme caution in crafting this legislation to assure that the bill is in compliance with federal standards to avoid the potential negative fiscal implications of failing to meet those standards.

With regard to the specific bills before the Committee today, the Division supports the concept embodied in Section 1 of S.B. No. 1054 to exempt from the open container prohibition both "vehicles for hire" and the area that serves as the living quarters of a recreational vehicle. We cannot support the "tailgating" exemption included S.B. No. 152. As now written, this would conceivably allow an individual to drive intoxicated the full length of a football stadium parking lot. The Division believes additional study of this issue is necessary and we would be happy to work with the Committee on such a study and to assist in the drafting of final language.

The Division supports the changes, modifications and revisions articulated in H.B. No. 6601, An Act Concerning the Administrative Per Se Program.

With regard to Section 1 of Connecticut General Statutes Section 14-227b(c) it is essential to the processing of administrative hearings, both expeditiously and correctly, that the police report provided to the Department of Motor Vehicles be accepted with a "certification of the arresting officer that such officer had probable cause to arrest such person for a violation of CGS Section 14-227a(a)." This statement provides the necessary information to the Hearing Officer about one of the four elements upon which the hearing is premised. The administrative hearing to determine whether or not the operator's suspension should be rescinded is not a criminal forum and as such, is governed by the Uniform Administrative Procedures Act, not the criminal standards of proof.

A criminal trial permits intensive and extensive questioning of all aspects of the investigation and arrest. This is not the case in this type of hearing. The type of hearing required, the level of "due process," is determined by the accused's interests in what may

be taken from him or her. There is no fundamental right to have a driver's license. The license represents an agreement between a licensing agency (DMV) and the operator that the operator will abide by specific rules and regulations and; therefore, may use the roads to operate a motor vehicle. According to Connecticut case law, a driver's license is not a right, but is a hybrid along with a continuum from "right" to "privilege." The "due process" required in a criminal trial is not required in an administrative hearing. The process that the DMV follows is mandated by the Uniform Administrative Procedures Act. The agency procedure is not adversarial (no representation by the State); the standard of proof is not "beyond a reasonable doubt," because it is not a criminal proceeding and the Rules of Criminal Procedure do not apply. The rules of evidence are much looser than in a criminal proceeding and the hearing is presided over by a Hearing Officer (a private attorney) and not a Superior Court judge. Due process in the DMV forum is satisfied by the presentation of a certified statement affirming this particular element of review. A full and complete examination of the entire arrest and investigation is the province of the criminal arena. It is quite consistent with the requirements of due process in administrative hearings for a certification, either by electronic transfer or in paper form, to satisfy the mandate.

The Division of Criminal Justice supports the use of electronic means to transmit data from agency to agency and from officer to agency employing an electronic signature. In the area of DUI enforcement, the process is quite paper laden and unnecessarily time consuming for the officer and the agencies involved. The Connecticut Impaired Driving Records Information System (CIDRIS) is being developed to assist the process by providing data warehousing and data transfer electronically; thereby reducing the amount of time the officer is off the road and that the agencies must devote to time-consuming paperwork. CIDRIS can serve as a model or fundamental building framework for other electronic data transfer projects especially since DUI prosecution is so paper intensive. The electronic signature is the future for data processing and efficient governmental practice. The Division of Criminal Justice supports the implementation of electronic transfer of data and acceptance of electronic signatures.

In conclusion, the Division thanks the Committee for the opportunity to provide input on these bills. We would be happy to provide any additional information or to answer any questions the Committee might have.