

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

**Connecticut Criminal Defense
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Judiciary Committee Public Hearing

**RAISED BILL NO. 961
AN ACT CONCERNING THE ENFORCEMENT OF THE BAN ON USING
A CELLULAR TELEPHONE OR ELECTRONIC DEVICE WHILE
DRIVING**

March 18, 2011

**TESTIMONY OF JENNIFER L. ZITO, PRESIDENT OF THE
CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION, IN
OPPOSITION TO RAISED BILL 961**

Chairman Coleman, Chairman Fox, and Distinguished Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of over 300 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

By way of this testimony, **CCDLA opposes passage of Raised Bill No. 961 to enhance the penalties for using a cell phone while driving in the ways proposed. CCDLA supports deterrence of cell phone usage through a 24 hour license suspension and/or increased fines to generate revenue for the State, however, opposes seizure of a cell phone for 48 hours as an unconstitutional seizure under the Fourth Amendment of the United States Constitution. Such**

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an unreasonable and warrantless seizure unreasonably intrudes on the privacy of Connecticut citizens who maintain personal information on their cell phones including emails, contact information, photographs, videos and the like. Such a provision is subject to abuse and runs afoul of federal and state constitutional rights. Deterrence of cell phone use without a hands free device can be accomplished constitutionally and effectively through a 24 hour license suspension such as that proposed in Raised Bill 6366 and/or the significant increase in fines. For the reasons more fully articulated below, CCDLA strongly opposes the passage of Raised Bill 961

I. Raised Bill No. 961 Violates the Fourth Amendment to the United States Constitution and the Right to be Free from Unreasonable Search and Seizures.

Raised Bill No. 961 seeks to repeal C.G.S. Section 14-296a and substitute its proposed language relative to the enhanced penalty provisions for enforcing the ban on using a cellular telephone or electronic device while driving. Specifically in section (g) the bill seeks to add a provision to allow a law enforcement officer who issues a summons for a violation of the cell phone ban to seize the device being used and cause the phone or device to be impounded for a period of 48 hours. It does nothing to change the current fines imposed for the violation which at present are \$100 for a first violation, \$150 for a second violation and \$200 for a third or subsequent violation. The stated purpose of the bill is to achieve more compliance with the law prohibiting the use of phones or electronic devices while driving.

While certainly CCDLA understands the dangers of driving while using a cellular phone or electronic device and encourages enforcement of the prohibition thereof, it must oppose the seizure of the device as an appropriate penalty on constitutional grounds. The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable search and seizures". The Fourth Amendment is made applicable to the states through the due process clause of the Fourteenth Amendment to the U.S. Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961). The Fourteenth Amendment in turn provides that "[n]o state shall...deprive any person of life, liberty or property, without due process of law...". Likewise, the Connecticut Constitution provides

that people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures. Art. 1, Section 7. **Under both constitutional schemes, the conduct of a search generally requires probable cause and a judicial warrant, or, at least, individualized suspicion that a crime has been committed.** Cell phone use while driving is not a crime but rather, a violation punishable by a fine and does not rise to the level of conduct needed to justify a warrantless search. Absent a warrant or a finding of probable cause that a crime has been committed our citizens' constitutional protections to be free from unreasonable searches and seizures are violated by the seizure of the device for 48 hours. These devices do not constitute contraband or a dangerous weapon necessitating their seizure. The purpose of Raised Bill 961 is purely punitive; its allowance for seizure of the phone, however, is not sufficiently narrowly tailored to justify its constitutional implications.

II. Enforcement of the Ban Can Most Effectively Be Made by Raising the Fines.

In today's economy, citizens are carefully budgeting and are cautious of unnecessary spending. Likewise, the State has an unprecedented deficit resulting in the layoffs of workers and cutbacks of programs and services needed by its citizens. It seems only logical then to deter citizens from using cell phones and electronic devices while driving by the threat of significant fines which if unpaid, can result in the suspension of their licenses. Penalties for new drivers should result in the immediate suspension of their licenses as this class of driver is most susceptible to accidents and highly prone to use electronic devices. Law enforcement too must do its part by stopping violators of the ban. Electronically displayed fines for prohibited use on our roadways will remind drivers to obey the law and will deter the dangerous practices that the law seeks to ban. Meanwhile, the State will benefit from increased fine revenue that will help diminish our deficit.

III. Knee Jerk Reactions Cost the State in the End.

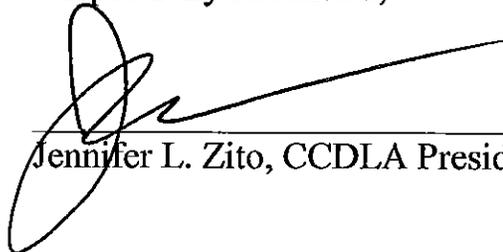
While seizing a cell phone may sound appropriate at first blush to punish wrongdoers while they drive, it will ultimately cost the State money in litigation and claims that will arise in the court system on the State's dime. Permitting

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seizure of such personal information contained on phones and electronic devices is ripe for abuse and claims of abuse. Further, businesses often own the devices being used Connecticut citizens and may contain proprietary information; a phone is not just a phone in this age of technology. Blackberry devices and iPods regularly used by our citizens as phones often contain personal, confidential and business information that is sensitive, proprietary and necessary for the operation of a business. The Legislature needn't go to this dangerous length to deter folks from using phones and devices while driving; the end can be accomplished more simply and efficiently through economic sanctions.

For these reasons CCDLA opposes the passage of Raised Bill 961.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Jennifer L. Zito, CCDLA President