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**Raised Bill No. 365 – *An Act Concerning Child Endangerment While Driving While Intoxicated and the Time Limit Under Which to Administer a Test for Blood Alcohol Levels***

**Judiciary Public Hearing – March 7, 2016**

The Connecticut Criminal Defense Lawyers Associations is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill 365. Raised Bill 365 creates a new crime for operating under the influence while carrying a child under the age of eighteen years in the vehicle. Although, this law seems well intentioned it is wholly unnecessary as the conduct is already encompassed, although not specifically, in another statute. Connecticut General Statutes § 53-21 provides that anyone who "wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child" shall be guilty of the crime of risk of injury. This risk of injury statute provides a vehicle for the state to prosecute the conduct that is targeted by this bill. There is no need to create a new crime that essentially combines the conduct already prohibited by the operating under the influence statute (§14-227a) and the risk of injury statute (§53-21). This new law would not prohibit the state from prosecuting both a violation of this new law and also a violation of the risk of injury statute, because although it is the same conduct the elements of each crime are different. Therefore a person could ultimately receive two felony convictions for the same conduct, if the state elected to so prosecute.

Since the conduct is already prohibited by existing statutes, the proposed bill serves only to further complicate operating under the influence laws and creates unnecessary duplicity. It is important that our laws are not so convoluted that they make it difficult for the average citizen to understand. Our OUI laws should remain as clear and concise as possible. The proposed legislation is not needed.

The proposed legislation is also flawed in other respects. Section 1(c) provides for the penalties to be imposed for convictions under this statute. Although the penalties are similar to the existing operating under the influence penalties, they are substantially more severe in certain respects. First, any conviction under this statute would be a felony. Second, any conviction would result in mandatory minimum jail

terms.<sup>1</sup> Mandatory minimum jail terms take discretion away from Judges and prosecutors, make plea agreements less likely, and unnecessarily incarcerate people who may otherwise be better served by probation or some other disposition of their case. Such mandatory minimum sentences essentially tie the hands of Judges and prosecutors, and remove discretion from those with whom discretion is most needed based upon the specific facts and circumstances of a specific case.

The third major problem with the penalties to be imposed pursuant to subsection (c), is the imposition of a condition of probation that would give the Department of Children and Families the ability to compel a person to "submit to an interview and evaluation by the Department of Children and Families to assess any ongoing risk posed to any child who was a passenger in the motor vehicle at the time of the violation." This condition ignores that the person although convicted of this proposed new crime, in fact has due process rights with respect to any pending child protection proceeding. In fact, it is mandated that if any person is charged for the conduct encompassed in this new law, i.e. operating under the influence with a minor in the car, that DCF would be notified, an investigation opened, and interviews and assessments performed. However, a person has a right to decline to cooperate with DCF, and cannot be compelled to provide DCF with information that may be adverse to themselves. This does not change just because a person would stand convicted of this new crime. Put another way, to compel "an interview" and an "evaluation" after a conviction, ignores the most basic tenants of child protection jurisprudence that a person cannot be compelled to provide DCF information. It further ignores that there may be an ongoing child protection matter in juvenile court whereby the person is entitled to due process.

Requiring, as a condition of probation, that an individual submit to an interview and an evaluation by DCF is far beyond the scope of what should be done through probation. There currently exists sufficient means for DCF to investigate allegations of neglect; probation is not the proper vehicle for such an investigation.

The proposed legislation also requires, as a condition of probation, that the person convicted "cooperate with any programming, treatment, directives or plan if so ordered by the Department of Children and Families." This portion also ignores the concerns stated about compulsive cooperation with DCF and the possible due process issues that may arise if there is a concurrently child protection matter in juvenile court. Additionally, this compulsive provision places a lot of power and control in the hands of a DCF social worker. For example, failure to adhere to the "programming, treatment, directives or plan" ordered by DCF would result in a violation of probation, and potentially incarceration. This dramatically enhances the power of DCF, and eliminates a person's ability to contest, challenge or fight certain services "ordered" by DCF in the juvenile court, as is the normal practice. This law essentially makes a DCF employee the final arbitrator of what an accused must do, and removes the ability to challenge DCF's plans, programming, treatment, directives in juvenile court. This is extremely improper and unnecessary.

The proposed legislation's conditions of probation that include empowering DCF and compelling cooperation with DCF, in essence empower DCF to become a de facto probation officer. DCF under the

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<sup>1</sup> A first conviction would require the Court to impose a mandatory minimum of thirty (30) days incarceration; a second conviction would require one hundred eighty (180) days; and a third conviction would require the Court to sentence a defendant to two (2) years mandatory minimum jail term.

current scheme has the ability to recommend "programming, treatment, directives or plan" to any individual arrested for similar conduct because said conduct will be reported at the time of arrest to DCF, as the police are mandated reports. However, currently an accused has the ability to challenge or contest DCF's recommendations through the juvenile court, and can exercise an accused's due process rights in that same court. The proposed legislation would make such challenges to DCF's order in juvenile court a fruitless endeavor as only DCF's orders would be the condition of the accused's probation and not the decision of the juvenile court.

While understanding the public safety intent of this bill, this bill goes too far and is contrary to the constitutional protections as guaranteed to all. Therefore, the Connecticut Criminal Defense Lawyers Association requests the Committee to take no action on this bill.