

Legislative History for Connecticut Act

HB 5429	PA 85-596	1985
Judiciary	1747-1766, 1782, 1796-1797, 1802, 1804, 1811-1820, 1826, 1832-1834, 1840-1841	41 p.
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Senate	5312-5375	64 p.
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State Capitol
Room E-53 & 55
April 8, 1985
12:00 Noon

PRESIDING CHAIRMEN:

Senator Johnston
Representative Wollenberg

COMMITTEE MEMBERS PRESENT:

SENATORS:

Johnston, Avallone, Upson

REPRESENTATIVES:

Wollenberg, Lugo,
McCavanagh, Dudchik, Looney,
Tulisano, Nardini,
Cunningham, Krawiecki,
Coleman, Daley, Baronian,
Shays, O'Neill, Nania,
Blumenthal, Mills, Fox

s. 1 SEN. JOHNSTON: Good morning. The first hour will be for legislators and heads of agencies. The second hour commencing at one P.M. sharply, we will move to testimony by the public. The ground rules, anyone testifying before the Committee today will be limited to five minutes, as to testimony, and we may run beyond that relative to the questions that may come from the Committee people. You will see Committee people walking in and out of the room. That's because there are various meetings going on and we ask that you bear with us.

We're happy that you're all here today to testify, and with that, we'll start with Donald McConnell. Is he here? Edith Prague.

EDITH PRAGUE: Good afternoon, members of the Judiciary Committee, Senator Johnston. Thank you for this, my name is Edith Prague. I'm the legislator from the 8th District. Thank you for this opportunity to testify on some issues that I feel are extremely important.

I want to testify first on the Per Se Bill, 5429. The per se legislation for Connecticut is long overdue. As of March '84, 41 states had already enacted a per se law, making it illegal to drive with a blood alcohol content of .10 or higher.

REP. PRAGUE: (continued)

As Mr. Lockland McClean, chairman of the Governor's Task Force on Drunk Driving said in his testimony before the Judiciary Committee in March of '84, what an illegal per se drunken driving law does is to buy certainty, is to bring, I'm sorry, certainty into the enforcement and judicial procedures. No longer would a driver with a blood alcohol level of .10 be able to argue to a prosecutor, judge or jury that he was not intoxicated.

The constitutionality of such laws has been upheld in ten states, Alabama, Delaware, Florida, North Carolina, New York, Ohio, Utah and California, Pennsylvania and Arizona. The people of the State of Connecticut are demanding more effective enforcement and more effective laws to discourage drunken driving.

I hope that this Judiciary Committee will this year pass such a law and give the people of Connecticut more protection from drunken drivers.

The second bill I want to testify on is Bill 6173, well, two bills, and 531, concerning the pre-trial alcohol education program. If somebody is picked up for drunken driving and it is his first offense, if he has committed any kind of personal injury or property damage to another person, it is my opinion that he should not be allowed into the pre-trial alcohol education program.

This pre-trial program is really a benefit. It gives the first offender a way to begin to learn about alcoholism and what he can do about it. However, we have a responsibility to the public, and so does everybody else. And if you injure anybody or cause any property damage, you should not be given extra privileges in my opinion.

Also, once people are in the program, if they break the rules of that program by number one, not attending the meetings. By number two, going out after the meetings with the boys and having a few beers and then be arrested for drunken driving, the judge should not have the leeway of sending them back into the program. It's my understanding that there is now confusion about what to do with these fellows who were already in the program, once they are picked up again. And they're being sent

REP. PRAGUE: (continued)
back. I think that we should make it very clear that
this is a one-shot chance, and if you break the rules
you don't get a second shot. Thank you very much.

SEN. JOHNSTON: Representative Prague, I have one question.
6173 is limited to making those persons ineligible for
participation in the alcohol education program to those
who cause physical injury or death of another person.
Are you suggesting we add property damage to this as
well?

REP. PRAGUE: Yes. Thank you.

SEN. JOHNSTON: Okay. Any further questions? Senator
Upson, followed by Representative Baronian. WB5429

SEN. UPSON: The other states, you say 41. What about our
sister states? What have they done? You said 41 states
have per se legislation.

REP. PRAGUE: I would have to, let me check on my list here.

SEN. UPSON: 41 states have passed per se legislation.

REP. PRAGUE: 41 states have. Sister states, that is New
Hampshire --

SEN. UPSON: No, I mean like Massachusetts, Rhode Island,
Connecticut.

REP. PRAGUE: Well, New Hampshire I would say is a sister
state. Rhode Island is a sister state. And when this
was printed in March of '84 Massachusetts had not yet
passed a per se law. They may have since, but certainly
New York, New Hampshire, Rhode Island, Vermont are
amongst the 41.

SEN. UPSON: And it's all .10.

REP. PRAGUE: .10.

SEN. UPSON: Period. No exceptions. .1 or more.

REP. PRAGUE: I think Ohio has an exception. It seems to me
when we were looking at this last year there was one

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REP. PRAGUE: (continued)
state out west that had .13.

SEN. UPSON: All right, now, do all the states have the programs like we have, where you can go in first, I don't mean first chance, but the first time to an alcohol rehabilitation program?

REP. PRAGUE: I can't answer that. I don't know what all the states have as far as the pre-trial alcohol education program. But to get back to your question about other states and .10, this is the Presidential Commission on Drunk Driving's recommendation as a national standard of .10 being a level at which people are considered to be driving under the influence. It also came out of the Governor's Task Force.

SEN. UPSON: You're not sure, though, if the other states have the pre-trial?

REP. PRAGUE: No, I'm not sure if the other states have the pre-trial alcohol education program.

SEN. UPSON: Do you want to, you want to amend, then, 6173 to say cause a physical injury, comma, property damage or death of another person? You want to add the words property damage?

REP. PRAGUE: Property damage?

SEN. UPSON: So in other words if someone's car is dented or doors, no matter how slight the property damage is?

REP. PRAGUE: No matter how slight the property damage is, because I feel it's time that people who drive cars take the responsibility of that right. If you're going to drive after you've had too much to drink, it's not fair to make innocent people victims of your irresponsibility. If you were driving along and somebody who was drunk smashed into your car and caused property damage to your car, you would be an innocent victim of this person who was driving under the influence.

SEN. UPSON: When you're talking about property damage, now, you just mean to another person, or if they knocked down a traffic sign or to the State, or --

REP. PRAGUE: No, to another person.

SEN. UPSON: So you'd limit it to --

REP. PRAGUE: Property damage to another person.

SEN. UPSON: Right. Not to utility or not to the State, not a traffic sign.

REP. PRAGUE: I have problems with innocent lives and innocent people being victims. I don't really care about telephone poles or a couple of signs along the highway, no.

SEN. UPSON: No, I'm just asking for --

REP. PRAGUE: I'm serious. I don't care about that. What I care about is people, and when somebody has had too much to drink gets behind the wheel of that car, they should know that if something happens, they are going to be held responsible and not given a slap on the wrist.

SEN. UPSON: You have no problem with the administering of a HB 5429 test to determine capacity?

REP. PRAGUE: Say that again. What, take that a step further.

SEN. UPSON: Well, it's my understanding and maybe we'll have an explanation here from somebody else about the testing, you have no questions with the reliability of the present test that's administered? Whether or not someone has reached .10?

REP. PRAGUE: There has been some talk around. So far nobody has proven that those toxometers are not working right.

SEN. UPSON: All right. And also I believe that someone, they have to offer you two tests, am I correct? I'm looking out here in the audience. I think you have to be offered two tests.

REP. PRAGUE: The police have the choice of the first test, and a person can choose the second test, a blood test or a urine test.

SEN. UPSON: And you think the present law where someone does not take the test, then they're, now that's interesting,

- SEN. UPSON: (continued)
they would jump into a per se situation, or do you suggest that? They do now, is that correct? They're presumed to be, if someone does not take the test, maybe Tulisano will --
- REP. PRAGUE: If somebody does not take the test, in the State of Alaska, they are fined a thousand dollars and lose their license for a year.
- SEN. UPSON: I think if someone doesn't take a test now in Connecticut they'd be automatically in a per se situation.
- REP. PRAGUE: No, they lose their license.
- SEN. JOHNSTON: It's a license suspension.
- REP. PRAGUE: It's not a per se.
- SEN. JOHNSTON: It's a violation of the implied consent statutes.
- SEN. UPSON: Do you think that should be a per se violation, if they don't take the test?
- REP. PRAGUE: I haven't thought about it in that respect. We might need to talk to lawyers as to whether that's possible, but I don't think that you can assume or say it's per se if somebody refuses to take the test legally.
- SEN. UPSON: I just wonder if that would change. If you, supposing somebody hit a person, and then, maybe the answers are readily available and I'm wasting time, I don't mean to do that. Supposing somebody hit a person and then refused to take the test, now under your suggestion if they hit a person, they would automatically not be able to get, let's say they were .10. If someone hit a person at .10 they don't get eligible for the program, correct?
- REP. PRAGUE: I think there's a law that says if you commit serious physical injury to somebody, you don't go into the program anyways.
- SEN. JOHNSTON: That's true.

SEN. UPSON: Well, all right. We're talking about physical injury and property damage to a person. Let's just take those two.

REP. PRAGUE: Yes, let's take those two.

SEN. UPSON: For your benefit, I'm thinking this out. Supposing somebody hits a car, somebody else. And then they refuse to take a test. If they took the test and were .10, you would not allow them to be eligible for the program, correct?

REP. PRAGUE: I say they're not eligible for the program if they hit somebody and cause property damage or physical injury whether they take the test or not. There is other evidence that can prove that they were driving under the influence beside the test.

SEN. UPSON: I'm just suggesting, yeah, all right. Just as long as someone who refuses the test doesn't get a less amount of sentence than someone who doesn't.

REP. PRAGUE: My fear is that our good lawyers will tell people not to take the test, and --

SEN. UPSON: They'd have to be pretty sober to make that decision.

REP. PRAGUE: But everybody has the right to call his lawyer, okay. There is other evidence that can prove that people are driving under the influence beside the test. The test would just give the courts more clout and would reduce flea bargaining. And I think flea bargaining has become a major concern.

SEN. JOHNSTON: Representative Baronian.

REP. BARONIAN: Yes, Representative Prague, can you tell me if this bill, the per se bill, 5429, is that identical to the bill that we had before us last year, in the House of Representatives, or has there been any changes in language?

REP. PRAGUE: You know, Representative Baronian, I'm glad you asked that. I have the bill that we had before us before. I have not compared this to that, but after today's

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REP. PRAGUE: (continued)
hearing when the Committee is going to consider this
bill I would like to meet with you and go over the bill
that we had last year and compare it to this bill.

REP. BARONIAN: I'd be happy to. I have not had the opportunity
to do that and I just wondered if there have been any
changes.

REP. PRAGUE: I suspect that the bill we had last year was
more lengthy and had more detail. It certainly was
several pages of sheets this size, so.

REP. BARONIAN: Right, okay. We'll do that then. Thank you.

REP. PRAGUE: We'll sit down and do that.

SEN. JOHNSTON: Representative Shays.

REP. SHAYS: Ms. Prague, Representative, I'd like to thank
you for all the work you've done during your only two
years in the Legislature on this issue, and just ask you
one or two questions. If you went into a theatre and
took a gun and starting shooting it around the theatre,
is there any pre-trial alcohol or pre-trial program you
can go in for taking this gun, even if you cause no
damage?

REP. PRAGUE: No way, no way.

REP. SHAYS: Right. Is there much of a difference of
somebody getting in a two-ton vehicle and driving on
our roads? Can't they cause as much damage as someone
with a gun?

REP. PRAGUE: I think that the issue that you're raising is
a very real concern and I totally agree with you that
there is no difference between going into a theatre with
your gun or getting behind the wheel of your car when
you're drunk. I frankly think that both instances
deserve the same kind of treatment. We have to begin
to protect innocent people out there and not let people
act irresponsibly get away with it.

REP. SHAYS: Isn't it also true that in the per se bill if
it passes that HB 5429 the validity of the test can still be

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REP. SHAYS: (continued)
challenged? That someone can make a motion that it
was, or present evidence that it was done, not done
according to procedure. Isn't that true?

REP. PRAGUE: Yes.

REP. SHAYS: And isn't it also true that in order for the test
to be given, that someone has to be isolated for fifteen
minutes and observed not having any food or liquid or
anything put in their mouth for a period of fifteen
minutes? And isn't that because they want to determine
what's down deep in the lungs and not something that's
in the throat? So isn't there procedure, very strict
procedures as to how these tests have to be administered?

REP. PRAGUE: Besides having very strict procedures, people
are trained in how to use that machine. They have to go
to the health department and are trained in using the
machine. And it's my understanding that by law that
machine has to be checked every 24 hours.

REP. SHAYS: So if the machine isn't calibrated for instance,
and not checked, isn't it a fact that the test would be
thrown out? So there are protections to the individual
that there have to be certain procedures followed and
so on.

REP. PRAGUE: Yes, yes, yes.

REP. SHAYS: Thank you..

SEN. JOHNSTON: Representative Tulisano.

REP. TULISANO: Edith, I promise you I would not get involved
this year --

REP. PRAGUE: Yes you did, Richard.

REP. TULISANO: But after the last series of questions I can't
resist. I want to know for sure that you believe that
personally and knowingly, taking a gun and going into a
theatre and shooting at people is the same thing as
someone who drives after drinking and kills somebody.
I want to make sure for the record that you consider
that exactly the same thing.

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REP. PRAGUE: Yes, I would consider both instances --

REP. TULISANO: Not the result.

REP. PRAGUE: The result is the same, that people can be killed, that people are injured.

REP. TULISANO: Okay, I understand the results are the same.

REP. PRAGUE: So if the end is a result of the means, then let me tell you that I consider them the same.

REP. TULISANO: Okay. Therefore you are, I'm not talking about the results. I'm talking about the culpability, yes you can, the culpability of the actor. Not to say that one should not be punished, but I want to know for sure that you consider and so do those who you advocate, that you say that is exactly the same the same intent is involved in both those cases.

REP. PRAGUE: Let's consider the fact that we're looking at a whole situation and you cannot separate one aspect of it from another.

REP. TULISANO: I just want to understand whether you consider that the same exact same situation.

REP. PRAGUE: Yes, if people are killed, people are injured, does it make any difference whether you are using a gun or whether you're driving a car because you're drunk and don't have control?

REP. TULISANO: What if you drive a car and kill somebody because of negligence? Simple negligence without any alcohol use at all?

REP. PRAGUE: If you skid, or --

REP. TULISANO: Whatever. There's no intent involved in that.

REP. PRAGUE: That's not the same as driving under the influence.

REP. TULISANO: It isn't. Okay, but you can distinguish, therefore, the result in that particular instant from the result in something else. Because the result is the same.

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REP. PRAGUE: You can distinguish it because accidents and situations that are beyond a person's control sometimes enter into the end result.

REP. TULISANO: Okay, okay. But then you assume therefore that there is some control and knowing what one does, when one causes a death or injury as a result of driving under the influence.

REP. PRAGUE: Yes..

REP. TULISANO: That's a difference however, between cognitively knowing it, purposely and understanding, going out and doing something, isn't there?

REP. PRAGUE: You have to repeat that question.

REP. TULISANO: There is a distinction, however, between that person who cognitively knows that they're going to take a gun and shoot somebody, as a person who cognitively knows they've been drinking but has no intent to cause the injury at the end. Is there not a distinction between those individuals just as there was one between the negligence and the simple negligence and person who is driving under the influence?

REP. PRAGUE: Maybe you could debate that in a court of law.

REP. TULISANO: No, I don't want to debate it. I want to know what your thought process is.

REP. PRAGUE: If somebody is dead or injured because of somebody's behavior, I can't be lenient towards why --

REP. TULISANO: I didn't ask you to be lenient. There is hardly very little difference as to the penalty, though, isn't there? I mean you can't conceive of driving under the influence as first degree murder, can you, as we commonly think of it, can you?

REP. PRAGUE: It's not considered first degree murder.

REP. TULISANO: I know, but you don't think it should. Do you think it should be, maybe that's the right question.

REP. PRAGUE: But isn't murder something that is quite --

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REP. TULISANO: Go ahead.

REP. PRAGUE: I guess, Richard, I can't debate whether people --

REP. TULISANO: You're coming to the right answer. There's no problem, go right ahead.

REP. PRAGUE: Legal technicalities. All I know is people are being killed by drunken drivers and we have to stop it.

REP. TULISANO: But unfortunately the technicalities become all important when you're imposing, starting a new law, so if you don't do it right, you're going to be in deeper trouble than you started off.

The next question I have with you, for you is --

REP. PRAGUE: If it's a question I can answer.

REP. TULISANO: Well, I'm just asking your opinion. If one is reserved for 15 minutes before you give the test, do you know whether or not that person is really incarcerated or under arrest during that period of time or are they arrested for drunk driving, I don't know the answer to this myself. I'm trying to get the answer. Are they arrested before they're required to take the test, or are they arrested after the 15 minutes is up and they take the test and found to be .10? Do you know what that --

REP. PRAGUE: If you don't know the answer, I certainly don't know the answer.

REP. TULISANO: I don't know. Under this law, what are you going to anticipate?

REP. PRAGUE: As long as they have been brought in to take the test and are given their rights, that's legitimate. If they're arrested before the fifteen minutes or after the fifteen minutes, I'm not sure that's significant.

REP. TULISANO: Okay. Thank you.

SEN. JOHNSTON: Any further questions?

REP. SHAYS: Yes, I do have a question.

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SEN. JOHNSTON: Representative Shays.

REP. SHAYS: Miss Prague, it's clear that in terms of automobile accidents, that aren't the statistics that half the people that commit automobile accidents are in fact driving under the influence?

REP. PRAGUE: Yes.

REP. SHAYS: That at least half of all the deaths are while driving under the influence?

REP. PRAGUE: Yes.

REP. SHAYS: Secondly, just to get back to an analogy that Representative Tulisano had, if a person was drunk with a gun in a movie theatre, is there any pre-trial program for that drunk person who's in a movie theatre with a gun, or is he going to be held accountable for the fact that he had a gun in a movie theatre and was shooting it? I don't care if people were hurt. I don't care if anything was damaged. Isn't it a fact that there is not a pre-trial program for that individual?

REP. PRAGUE: You're right.

REP. SHAYS: Thank you.

SEN. JOHNSTON: Thank you, Representative Prague.

REP. PRAGUE: You're welcome.

SEN. JOHNSTON: Donald McConnell. Chief William Scalise.

CHIEF WILLIAM SCALISE: Chairman Johnston, Senators, HB 5429
Representatives, thank you very much for allowing me to speak on this subject today. I am speaking on the per se law.

I'm going to speak on the per se law. We're here today in an attempt to strengthen our ability to enforce the offense operating under the influence of intoxicating liquor or drugs. The statute originated in 1921 as PA 1921 Chapter 400, Section 30. In 1930 it was changed to Section 1585, in 1931, '39, it was again changed to Section 496E. In 1958 it was changed to Section 14-227.

CHIEF SCALISE: (continued)

and 1963 saw a change to 14-227A. Let us refer to July 1928, the case of Connecticut versus Andrews, Volume 108 Connecticut Reports, page 209.

This case established the definition of the offense and for the benefit of those who are unfamiliar with it, bear with me while I quote. The offense, while operating under the influence of intoxicating liquor it was established by proof that the accused through the consumption of such liquor had become so affected in his mental, physical and nervous processes that he lacks to an appreciable degree the ability to function properly in relation to an automobile. In brackets, motor vehicle. Since this case was heard, we have had numerous cites regarding appreciable degree. For instance, Connecticut versus Plourde, 1966. Enfield versus Sullivan, 1964. Cite 199A, Section 693-151 Connecticut 506.

Impaired ability, Connecticut versus Holatra, 1963. That's two Connecticut Circuit Court 45. The per se amendment would put to rest the necessity of clarification by appeal the degree of impairment. It has been established scientifically that a person operating a motor vehicle with more than .05 BAC is definitely impaired to the point where he lacks to an appreciable degree the ability to function properly.

Per se concerns .10 and is in of itself the law, pardon me, as in and of itself the law is violated. Let us be adult enough about this to stop playing games. Establish per se, please. Any questions?

SEN. JOHNSTON: Yes, thank you, Chief Scalise. We're delighted to see you here today and thank you very much for the correspondence you've been sending me relative to this issue. Can you tell us anything relative to your personal knowledge of the realities of the pre-trial alcohol education program?

CHIEF SCALISE: Well, I believe that the pre-trial program is a good thing for the first-time offender. I don't believe, along with everyone else, that someone should be incarcerated for their first offense. And I believe that it is beneficial to both the State and the public. However, I don't believe that this program should be

CHIEF SCALISE: (continued)

abused. And I believe that any abuses of the program should immediately be referred back to court and the accused should be put to trial.

SEN. JOHNSTON: Now when you talk of abuses in a program, you're, without mentioning any names, is it you have knowledge of people who enter into this program don't always attend, and derive benefits from the program in the best way possible? There are what sort of abuses?

CHIEF SCALISE: I had information where people arrived at the classes while they're under the influence, people don't attend classes regularly and the people have been arrested for operating under the influence while in the program. And I feel if anyone is in the program that's arrested for operating under the influence, that they should be immediately put to plea and trial on the first offense and should be tried as subsequent offenders on the next offense.

SEN. JOHNSTON: You have information that there are people involved in this program that attend the classes while under the influence?

CHIEF SCALISE: I do, yes.

SEN. JOHNSTON: Any further questions? Representative Shays.

REP. SHAYS: Sir, in your work, by the way I am very grateful to all the work you spent over the last few years to come up here, because you don't have to do this and it's very appreciated. I have been told by some State Police in the areas where we have two-lane roads, two-way traffic, that sometimes after one o'clock, they fine that they are inclined to want to be on the side of the road, not driving, because of the fear of drunk drivers. And I'm just interested in your own community, if you find that same concern. In other words, are our roads so bad that late at night that someone really takes a chance driving?

CHIEF SCALISE: Well, I think some members of the public might be placed in fear in that fear. Our officers have not expressed that concern to me. They're out there and they look upon that as just one of the aspects of their job

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CHIEF SCALISE: (continued)
and make whatever arrests are applicable. If they
have probable cause.

REP. SHAYS: Have you ever had any of your officers hit by
drunken drivers?

CHIEF SCALISE: Yes, I have.

REP. SHAYS: Many? Any injury result?

CHIEF SCALISE: One in February, one of our officers was
killed, by a man that was operating under the influence.

REP. SHAYS: This February a year ago?

CHIEF SCALISE: No, this past February.

REP. SHAYS: The nice thing that can be said about you, sir,
is you didn't wait til that happened. You've been here
in previous years before that happened.

CHIEF SCALISE: Thank God, yes, sir.

SEN. JOHNSTON: Further questions? Representative Looney.

REP. LOONEY: Representative Looney from the 96th District.
Chief, one question about the per se standard. In your
view, is everyone impaired at .10?

CHIEF SCALISE: Absolutely.

REP. LOONEY: But are there varying degrees of impairment at
.10?

CHIEF SCALISE: As I stated, Mr. Representative, a person is
impaired scientifically, not according to our Connecticut
General Statutes, but scientifically, he is impaired at
.05.

REP. LOONEY: Now would that apply to everyone, regardless of
age, size, weight, physical conditioning, other factors
that might be taken into consideration?

CHIEF SCALISE: Absolutely. The alcohol content takes into
consideration your height and weight. Here's a card

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CHIEF SCALISE: (continued)
put out by the Transportation Department. That's the
Connecticut State Department of Transportation. I have
one for each and every one of you if you want to look.

REP. LOONEY: Thank you, Chief.

CHIEF SCALISE: And you can see that if you look at that card,
that a person who's logged several drinks before they
attain 10. For instance, a person who is not slender
as I myself am not, can have four drinks at 200 pounds
and still not be, within one hour, and still not be 10.

REP. LOONEY: Thank you.

CHIEF SCALISE: May I?

SEN. JOHNSTON: Sure, why don't you give them to the clerk
over there, Chief.

: Before he does, let me take a look.

: Yes, can I have one of those, please? Thank
you.

: Do you charge for this?

CHIEF SCALISE: No charge. DOT handed them out to us.

SEN. JOHNSTON: Okay, thank you very much, Chief. Thank you.
Representative Farr.

REP. FARR: I'm Representative Robert Farr, 19th Assembly
District from West Hartford. I wish to speak on behalf
of Committee Bill 5429, which is An Act Establishing a
Per Se Standard for the Operation of Motor Vehicles.
I'd just like to point out, I didn't hear the testimony,
prior statement, prior person, but I would point out
that per se law is the law of the land of most civilized
nations in the world. In addition, it is the law of
the land in a vast majority of the states in this nation.
At the present, 42 states have per se laws.

The per se standard would be very similar to what we
have done in the area of speeding. Originally at one
point, fifteen or twenty years ago, in the State of

REP. FARR: (continued)

Connecticut, if you got a ticket for speeding only if you drove at an unreasonable speed, and you could be clocked at radar at 85 miles per hour on the Berlin Turnpike at 2 o'clock in the morning, and you could have a trial and put on testimony that that was reasonable at 2 o'clock in the morning because you had a sports car, were a good driver, and there was nobody else on the road, and sometimes you could win those trials.

And as a result, when they gave out a ticket for 80 miles an hour on the Berlin Turnpike, it was very difficult to enforce the speeding laws, because people would ask for jury trials and occasionally win.

So we made a per se speeding law in the State of Connecticut. What we said was, you went faster than 70 miles an hour, we no longer required evidence of whether that was unreasonable or not. We said going faster than 70 miles an hour was per se a violation of the law. Per se laws for drunk driving would be exactly the same thing. What we would be saying, above .10 blood alcohol content is a violation of the law. We don't any longer have to have testimony as to whether or not you were intoxicated.

And that standard is derived upon the fact that all of the tests have been done, indicated that no one cannot, who is not impaired when they're above .10. And I would point out that our Connecticut laws at the present time in fact say that we have a per se law for driving under impairment, impaired. Already if you drive, and you're arrested between .07 and .1, it is per se an infraction. And what this would say is per se a violation of the laws if it's above .1. It's a necessary law because I point out that if you get arrested for driving under the influence, the first time through, you're going to go through the alcohol education program.

The only people are really going to be affected by this law are second time offenders. And what we're saying is we want to have some law that's enforceable without having to go through jury trial for second-time offenders because otherwise the courts are never going to be able to handle the requests for jury trials. This is a necessary part of effective drunk driving legislation. I'd be happy to answer any questions if there are any.

SEN. JOHNSTON: Representative Shays.

REP. SHAYS: Representative Farr, have you given any thought to the fact that when we adopted the pre-trial alcohol education program, a number of people then were considered first-time offenders who now have gone through the system and now are going to be coming back for the second time? Doesn't that portend an incredible number of second-time offenders coming into the system?

REP. FARR: Well, that's exactly why this law is needed so badly, right now, is because we are beginning to build up now the backlog of those people who were the second offenders. First time through they went through the alcohol education program, and last year we had a tremendous number of arrests and those people, the people with real drinking problems are now going to be coming through the system a second time. That point out in terms of the level of alcohol, we're not dealing with people, people will argue that well, with .10 we can go out and have a drink on the way home and you're going to throw the book at you. That's not what it's all about.

In most cases, the average person that's arrested is at .19, and for most people their situation that they had nine drinks before they get arrested, and yet they still have the right to a jury trial and we'll still argue that well, you know, they were at a party. They could handle their alcohol. They wanted an opportunity to bring in people who were at the party with them that will testify that they were able to drive and really weren't impaired, and they tie the courts up with those types of trials, with the hope that once in a while they're going to successfully persuade some jury that someone with nine drinks is not under the influence.

That's preposterous, and if you want to have effective drunk driving legislation, you need a per se law. That's the recommendation of the President's Task Force, it's a recommendation of the Governor's Task Force. It's the law of the land in 42 states. Very few states that don't have this now.

REP. SHAYS: Isn't it likely that if we were not to have such a law that when in fact they request a jury trial,

REP. SHAYS: (continued)
the prosecutor, knowing that he has to prove things other than the alcohol content, would decide to plea bargain merely because he couldn't handle the workload?

REP. FARR: Well, that's exactly the problem. You get overwhelmed with the fact that the trial now becomes not a trial, simply as to the question of whether or not the person had a certain amount of alcohol in his blood, but instead a trial as to whether that became maybe so intoxicated so that he could not handle a car, and he would have the opportunity under present law, to put on all the witnesses he wanted to prove, not that he didn't have a .19 alcohol content, but instead that with a .19 alcohol content, that he could handle a car safely, and he could put on 20 witnesses if he wanted, and tie the courts up for two weeks, testifying that yes, he can handle his alcohol. Which is really preposterous.

REP. SHAYS: Thank you.

SEN. JOHNSTON: Further questions? Thank you, Representative Farr. Karen Charest.

KAREN CHAREST: Hello. I'd like to speak to you today about accelerated rehabilitation. First I want to give you an account of what's happened to my family, so that you can understand my position in this. On May 19th, we were celebrating my daughter's first communion and my mother and father-in-law were coming home from church when they saw an accident in the middle of the road. And their son was lying in the middle of the road dead, and his father-in-law was next to him.

They came to our house and we immediately went to the hospital. We learned that David was hurt by Attorney Anthony Pagano. And he was dead. When we began the --

REP. SHAYS: It was not Mr. Pagano who was dead. Who was dead?

MS. CHAREST: Oh, I'm sorry. My brother-in-law, David, died in the accident. Mr. Pagano at the scene of the accident told police that he was alone in the vehicle. In fact he had a passenger with him, 21 years old. He was at a wedding reception for her cousin, and it was not his

MR. PFANN: (continued)

probation. If they repeat the act, I daresay they will face at least 30 days in jail, a significant fine, probation and severe chastisement from the court. How many forgers do we know who took a life or permanently injured someone in the act?

Society doesn't condone forgery. So we can get stern actions, especially for repeat offenders. Compare these families to what is happening with drunk drivers, and you readily see why significant change is needed.

Several issues are currently before this Committee which deserve your full support. First is to institute a per se provision within the DWI statutes. This has been raised as an issue the past two years, yet not adopted. I find it curious that 42 states and the District of Columbia have this provision, at least four states Supreme Courts have affirmed its constitutionality, the U.S. Supreme Court approves it constitutionally. The President's Commission lists it as one of the four criteria for allocating added highway funds to our state. The Governor's Task Force gave a strong recommendation in 1983. Repeated urging from the prosecutors, law enforcement and public sector have been forwarded to elected officials, yet we are still without passage of per se in the law. (HB 5429)

If so many entities are confirming its propriety and realizing its benefits, I see absolutely no justification or defense in denying its adoption in 1985.

Being one of the last eight states to legislate per se and controls for DWI offenses certainly does not create a picture of pro-active address to the problem. The benefits are obvious. Reducing backlogs of cases bogging down our courts, expediting offenders through the system, assuring our law enforcement that good arrests result in effective prosecution, and maybe most importantly, we will soon convince those who would bar later laws that they must and will face the consequences for their acts.

Another issue also quite primary, excuse me, is the suspension of licenses for DWI offenses. I'll hit this head-on. I support the Governor's suggested 30 day

SEN. JOHNSTON: Questions? Thank you, Jim. Janice Heggie.

JANICE HEGGIE: Hi, I'm Janice Heggie, and I am president of the New Haven chapter of MADD. I'm also a registered nurse in a local emergency room, one of the largest in the state. I come with a statistic that I hope will help pass the per se law.

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Since March first of 1985, one-third of all our drivers involved in motor vehicle accidents were legally intoxicated with levels of greater than 100 and levels as high as 420. Of all these patients in the emergency room, police were there for only three of them. They all technically should have been arrested for drunk driving.

I became involved with MADD after seeing a three-year-old child critically injured with a head injury because his father had a blood alcohol level of 350 and he was not arrested. I also ask that you consider helping the medical profession become legally covered, so that we can report drunk drivers to the police. As it is now, I cannot call the police when a drunk driver arrives in the ER and goes back in his car to cause further damage. That's all I have to say.

SEN. JOHNSTON: Okay, that was quite fine. Questions? Apparently not. Thank you, Janice. Betty Pfann.

BETTY PFANN: I would like to address one thing. I believe Mr. Avallone asked a question, can a blood alcohol taken in the course of examination at a hospital be used in court. Yes, it can, it can be subpoenaed. We request it all the time. In other words, if someone comes in and they're injured so that blood testing is done necessarily, not for the purpose of finding out alcohol content. We very often find that when someone is charged with reckless driving, if we go to the prosecutor and ask would they please subpoena the blood alcohol from the routine testing at the hospital, then we find they do that, and then they find out, yes, he was loaded, .24 or .27. So that is legal evidently.

All right. In my capacity as Secretary of RID Connecticut, I have almost daily contact with the courts and with victims of drunk drivers. I would like to share with

MS. PFANN: (continued)

you some of these cases. They are not rare. They happen every day in Connecticut.

For the information of those Committee members who perhaps don't know it, the pre-trial alcohol education program divides its instruction into groups, the social drinker and the heavy drinker or alcoholic. David Bryan of the Meridian Center in Stamford, has asked me to speak to the social drinkers' class. His hope is that telling what happened and what it is like to live with our Laurene Michael killed by a drunk driver, will impress on those people what terrible consequences can result from their irresponsible, thoughtless acts.

Maybe David's right, and maybe it's worth the pain, if so. But my experience monitoring the courts and working with the victims tells me he's probably wrong.

I wish you could sit in the courts with me and watch the endless line of individuals assigned to the program, turn from the bench with big smiles on their faces, laughing as they go out of the court. When they get out in the hall, there is the inevitable cheer. They got away with something. No fine, no jail, just a nuisance class to go to.

A young woman in her twenties, sentenced to the program in Vernon Superior Court epitomized the general reaction. She turned from the bench and as she proceeded up the aisle she rolled her eyes, laughed and said to all of us facing her, big deal. Does anyone in this room truly think that she will learn anything about the horror of drinking and driving with an attitude like that? Or that eight sessions interrupting her social life briefly are going to change her attitude?

In the rare case where a judge is wise enough not to grant the program and the party is fined and/or given 24 or 48 hours in jail, there's no joking. There isn't any wisecracking. This becomes a serious situation to be avoided. So what should we do with the drunk driver?

Judge Philip Mancini of Norwalk Superior Court recently jailed a young woman for 24 hours after she appeared in court on a first offense drunk driving charge. Kim's

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HILDA DAVIS: I'm Hilda Davis, the president of New London chapter of MADD. Long overdue in Connecticut and needed is an illegal .10 per se standard for operating a motor vehicle under the influence of liquor. Not only will it serve as a deterrent to drunk driving, it will assure our police that their arrest will result in a conviction.

As Representative Shays has stated, it is not unheard of that prosecutors fear to prosecute with even the evidence of a .214 BAC after a fatality because of the defendants went to a jury trial, and the resulting overcrowding of the court system and more work for the already overburdened prosecutors.

About 40 states have a per se standard. The goal of MADD is a .08 standard across the nation. In two states, Oregon and Utah, already have a .08 level. MADD would like to see the penalty raised to a one year license suspension for refusing to take the breathalyzer test. And the breathalyzer test should be mandatory if the driver has caused an injury or a fatality and there is evidence of drunkenness. And if the driver is injured, then a blood test at the hospital should be mandatory if there is evidence of drunkenness and admissible in court.

The Governor has recommended and MADD endorses an automatic 30-day license suspension for the first offender who chooses to enroll in the pre-trial education program. And a drunk driver who injures someone or damages property should not be eligible for the pre-trial program. The program does need to be tightened up. All too often the participant violates the rules of the program by missing class or coming to class drunk, and is sent back to court and instead of a sentence being imposed, the violator is sent back to class.

Our fatality rate is increasing. Our police are doing their job. And DWI arrests have tripled in the last few years. The people of Connecticut want the drunk driver off the road. We're asking legislation to set a precedent in our state. Thank you.

SEN. JOHNSTON: Questions? Thank you. Bernie McLoughlin.

MR. MCLOUGHLIN: (continued)

As active members of both MADD and RID we have learned the very sad truth that very few drunk driving arrests result in drunk driving convictions. We commend the members of the General Assembly for having gotten the message, as evidenced by the number of bills introduced concerning drunk driving reform.

Specifically, we urge passage of House Bill 5429, which is per se, and House Bill 6829, An Act Concerning the Testimony of Drunk Driving Victims and related legislation to limit the discretionary authority of Judge Susco and her colleagues on the bench, and to show them that the people of Connecticut want tough drunk driving laws, and rigorous prosecution.

We commend Representative Edith Prague for spearheading the effort for drunk driving reform. She realizes what we've come to realize, that drunk drivers are involved in a million collisions annually with their assault and battery resulting in injury to 650,000 people and the murder of 25,000 people. We'd also like to publicly thank Representative Paul Abercrombie who worked with us over a period of time researching legislation and he introduced four bills dealing with drunk drivers and victims' rights. Thank you.

SEN. JOHNSTON: Questions? Thank you, Bernie. Bill, William Wholean. Donald McConnell.

BILL CAROL: My name is Bill Carol. I'd like to speak for Don because he had to leave. My name is Bill Carol and I work at the Connecticut Alcohol and Drug Abuse Commission and I'll be, Don McConnell unfortunately had to leave for another meeting, and was unable to testify. And I'd like to give testimony on his behalf.

Driving while intoxicated has been a major concern of Connecticut Alcohol and Drug Abuse Commission for many years. We have initiated, participated in and assisted in a multitude of efforts directed toward enforcement, prevention, legislation and treatment, related to this problem, including the development administration of the pre-trial alcohol education and treatment system, referred to several times here today.

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JOHN MALONE: Thank you, Mr. Chairman. My name is John Malone. I wanted to mention first the bill establishing the per se standard for operating a motor vehicle under the influence, and indicate that we are in favor of the principle of establishing a per se rule. However, there are some problems we see with 5429. I don't know whether or not they've been addressed or considered to this point.

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Referring specifically to Section D which is on page 3 of the seven pages, and that as I understand it, removes the third and the fourth level at which a prima facie evidence, prima facie effect of the blood alcohol content may be considered by the trier of fact. It's our opinion that that would pretty well gut the section A-1 that is a person driving under the influence, that's a non per se section. There are times, it would seem to me that the State's Attorney would want to have the option of prosecuting under one or both at the same time. Obviously a person could not be convicted or sentenced consecutively at least for one instant, but it may well be that for one reason or the other, the jury or a judge may decide or decline to convict under the per se rule, and yet the person's prosecutor for the straight under the influence, the blood alcohol content should have a prima facie effect on the evidence although obviously not a conclusive one through the blood.

My suggestion is that there should be that that the entire section be included in the act, that is D subsection 1, 2, 3, and 4. However, the effect would be limited to prosecutions under subsection A-1 of the statute and also subsection B. And that would allow prosecution under both of the subsections and yet allow, still allow the prima facie effect for reading over .10.

We also, I know it's not under consideration, but I'd like to point out to the Committee some history with respect to the and we found that to be somewhat of a problem with the police officers --

SEN. UPSON: That's .07?

MR. MALONE: That's correct, yes, sir. And the penalties, it's primarily in the penalty section, which is on page 5 of 7, that's subsection I of the bill. Which is carried

MR. MALONE: (continued)

over from right here. The problem is this, in prosecution for an infraction, that is not normally done by arrest. When a person is charged with an infraction, he's given a piece of paper which is a complaint. And he's, can either send in the money or elect to plead non-guilty and ask for a court date.

The difficulty with it is is that in order to find that somebody had been operating while impaired, a blood test must be done, usually the intoximeter. In order to conduct an intoximeter test, the person has to first be arrested, brought to the station, then given a test in order for the test to be eventually admissible. What that means is that if a person is brought in to, arrested and brought in to the station, and given a test and then the result is between .17 and .10, he then has to be un-arrested and given a complaint and allowed to appear in court that if he wishes to contest it. Police are very reluctant to un-arrest and I found it very difficult to explain to the police groups that I've addressed the logic of how to un-arrest somebody they've already arrested.

A more serious problem exists, that the police department in our opinion, may be find themselves civilly liable for letting the person back out on the street if he has for instance, a .08. The danger with a person with .08 may be given an infraction complaint, sent back out in his car and if God forbid he has an accident on the way home or wherever he's going, it seems to us that the police have a chance at least of being sued, and perhaps the judgment would go against them for allowing a person in that condition, who they felt was drunk enough to arrest and bring to the station, back out on the street.

My suggestion is that, instead of being an infraction, it might be given a lesser penalty if it be a custodial offense, and the purpose of that would be to allow the police to keep the person at the station until a reasonable time has passed until he's at least able to drive. Have a court appearance required and have a lesser penalty for whatever in your judgment you think is sufficient.

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MR. MALONE: (continued)

But our experience is the police generally more, the driving while impaired, and it's really only used as a possible deduction of driving under the influence cases once they're in court. So if this is to be useful at all, I recommend it not be made an infraction but be a custodial offense, with lesser penalties.

SEN. JOHNSTON: Did you have a question?

REP. TULISANO: Yes, what difference would it make if, I asked Representative Prague actually something like this earlier, if an officer arrests them, has probable cause obviously, must arrest him before he gives him the test, as I understand what happens, because in order to take him into any custody, they're taking him, detaining him for that length of time, his right to attorney and custody, then arrests him, then holds him, because they have to hold him for a period of time to make sure they don't take anything in their mouth or something, --

MR. MALONE: Fifteen minutes.

REP. TULISANO: At least that, right. Then they come out with the result that it's under .10 anyway. What would occur without the impairment existing on our books?

MR. MALONE: Right now, he'd be held for --

REP. TULISANO: What about .05, whatever it is?

MR. MALONE: If it's a .05, the police officer would in all probability, hold him, present him to court and say, well, the court can take care of it, because you can very well --

REP. TULISANO: So he doesn't try to un-arrest him, as you indicated before, right?

MR. MALONE: No, they don't do that.

REP. TULISANO: Well, then, I don't understand what the problem is then? If he's got something he can give him.

MR. MALONE: No, the problem is that if they decide to change the charge from what they originally contemplated, that is driving under the influence, a custodial offense, to driving while impaired, a non-custodial offense, he has to free him. He has absolutely no authority to hold him. Now, he's putting on the road at that very minute, a person whose blood alcohol content is .08. That is a person who has within his blood system, the equivalent of a 4 ounces of --

REP. TULISANO: But the Legislature hasn't decided you can't operate at all at that point level. I mean, that's the first decision that has to be made. What I'm saying to you is, what you really told me in reality, and I think the Chief behind me is going to have something to say about this later, but don't they in fact just don't change it and they just let the court change it? If that's the real problem? Isn't that what really happens? I mean, is this such a real problem?

The person is arrested, he has probable cause, cop thinks it's at least above .10 or better, brings him into, arrests him, brings him into custody. He finds out this .05 person is not guilty of anything that I know of including impaired at that. Under our current law, at least. What do they normally do under that situation? They don't do anything, they hold them and let the court make a decision, right? Why couldn't that same thing apply at .07 to .10? Why doesn't it?

MR. MALONE: There's no reason to have it, the drunk while driving impaired law if you don't use it at all.

REP. TULISANO: Okay, well I mean, it's available, you can get something as a result of it.

MR. MALONE: You get nothing.

REP. TULISANO: When it goes to court as a prosecutor, you may reduce it to that. If it were .07, why would it make a difference? The Legislature pointed to it as another learning tool, I mean that's why it was put in that way. But you're saying that it should be there.

Another question I have. When you first started, you're talking about the dual standard in the per se law. I

REP. TULISANO: (continued)

understand you have to have in there for that where you didn't have the blood test. I mean if you're going to have a good law, you have to have that ability to. how you drive, etcetera, still in, some parts of it. Why would you want to have the alternative available as a prosecutor? If you're .10 and that's per se, why shouldn't you be required to go under per se? Now, explain that to me, why not.

MR. MALONE: It may very well be that a person is maybe perhaps a poly-substance abuser. We have situations where a person has nearly a .10 or slightly less, and may have ingested some other drug in addition to the alcohol. Obviously we're looking at a straight alcohol prosecution. You can find a person not guilty of the per se law since the alcohol was under .10 however they would be under the influence of alcohol and drugs.

REP. TULISANO: Right. The proposal before us allows that, right, allows the two-prong tactic. You're either .10 or if you don't have the blood test possibility of conviction under the impairment section,

MR. MALONE: It's Section A.

REP. TULISANO: Right. Okay. I mean you've got to have it for one section, but why would you want it to apply even where there was a blood test that came out .10? I mean I don't know that you should, because then I think you open up a lot of trouble, but maybe you have the reason why. Tell me.

MR. MALONE: You may or may not. Obviously a person should not be convicted and sentenced for both consecutively. I think we can agree on that.

REP. TULISANO: Yes, right.

MR. MALONE: There's no difficulty to that.

REP. TULISANO: Why shouldn't you have to choose whether you want to go with per se or the other, I'm asking you. I guess that's what I'm asking you.

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MR. MALONE: The reason is that the prosecutor I feel should have the option right up until the time of trial of to take a prosecution either under the per se or under the straight under the influence. Oftentimes, the nature of the evidence may not be available to him at the time. If you're required to make an election, you know, Mr. Tulisano, the defense counsel --

REP. TULISANO: Never tried one in my life.

MR. MALONE: The defense counsel seeks to have the prosecutor make an election as early as he possibly can. Our feeling is that in order to allow the prosecutor to make election if he wishes, there should not be in effect that necessity for election --

REP. TULISANO: Well, I understand having to make election later on down the line. I understand that. But once you've gone to trial, when do you think you should have to make an election? Maybe that will do that, ask the question.

MR. MALONE: I don't think there should have to be an election made. I think it should be up to the judge, if there's a conviction on both counts, then he should either set aside one of the two counts or sentence consecutively.

REP. TULISANO: The possibility exists, if we write it the way you suggest, that you end up with a conviction which you agree with should not occur, but --

MR. MALONE: I have no difficulty with that, as long as he's convicted on one, they can always set aside the other.

SEN. UPSON: Any other questions? All right. Thank you very much. I believe it's Frank Roche and Connecticut Chief of Police. Frank, if you don't mind, we're going to have a timer on.

FRANK ROCHE: That's fine. I'm short, sweet, snappy, what I say is direct.

SEN. UPSON: They all say that, Frank.

MR. ROCHE: My name is Frank Roche --

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REP. TULISANO: He's a good man. He got me back my stolen checks once, too.

MR. ROCHE: Before you even knew it was stolen. On behalf of the Chief of Police Association of Connecticut, we will go along with the per se rule. We think it's an absolute necessary bill. I won't go into the credibility of the bill, for the simple reason you have it. You have it from the President's Task Force on Drunken Driving, you also have it from the Connecticut Task Force on Drunken Driving. If you haven't got enough evidence now to undertake the supporting of that bill, you will never have it. You have 42 other, you have 43, 42 states have that per se rule, so I think that it's, there's 17,000 arrests being made in the State of Connecticut today.

And there is enough safeguards within the arrest of a drunken driver by way of the probable cause factors that must be established prior to even taking a test, to substantiate that all of the requirements have been followed.

Everybody knows that anybody that has a .10 or above is seven times more likely to become involved in an accident. It radiates quite readily from thereon. It goes to .5 which is just half about much more. You're talking about 26, so they're really getting ploughed from about .10 and they should not be on the road. And there should not be any agreement or disagreement by responsible legislative people.

In relation to the limited license, that's another bill that was proposed here, I don't think you should be catering to the drunk driver. You will be eroding the value of suspension by making limited license. If you're going to do that, you might just as well make it for all other suspendable items. I think you're absolutely going to ruin what suspension is all about. It's a foregone conclusion that penalty has to be direct and has to be instituted without any fanfare in order for it to be effective.

Th-re was one other one, you have a bill instituted there where drunken drivers would educate people in high schools and what have you. If you have 17 drunks, most of them

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MR. ROCHE: (continued)

can't even educate themselves. I think you would have a very serious problem in managing that group.

To relate to what you were saying before, Representative, you're right, law enforcers do not make arrests on drunken drivers, because there is no controls on drunken drivers. Nobody was ever convicted for drunken driving before.

So the effect, we had no deterrent to drunken driving area going back about four or five years. Now we've got 17,000. I think the documentation from CADAC in relation to the recidivists who have gone through the program, you'll find that it's going to be very beneficial. I think the first time social drinker, once they get exposed to the fact that they are arrested for drunken driving, never happen again. Just won't happen. And they get their insurance premium up and they're exposed to law enforcement making them go through the processes of drunken driving, being exposed to themself, you would have a very serious problem. The controlled drinker will not get arrested again.

The alcoholic, no faith for them. They should be suspended, take their license away, take their cards, do whatever you want with them unless they're totally abstaining from alcohol. These people you have no help for.

SEN. UPSON: Any questions?

REP. TULISANO: Can you tell us how police really have this problem that --

: No.

REP. TULISANO: That was described by --

MR. ROCHE: Described previously? What you have is that per se rule, and what the counsellor just explained. You place the person under arrest. He must be placed under arrest for drunken driving in order to have him take the test. So the fact is, that in fact if you do take the test and you find that it falls into .10 and above, we process it to the court, and if the court feels that there's not substantial evidence other than that BAC reading, then

MR. ROCHE: (continued)
they will in fact reduce it to the impaired, if it falls into that category.

REP. TULISANO: The question is, do you come out after you've arrested them, you'd have probable cause for whatever reason --

MR. ROCHE: Absolutely.

REP. TULISANO: They take the test. Because you initially have probable cause to put them into custody, right?

MR. ROCHE: Absolutely.

REP. TULISANO: Now you come in and he comes out, the test reading comes out below .10. Do you have the kind of problem he described here?

MR. ROCHE: I don't have a problem because I do not allow my people to un-arrest.

REP. TULISANO: You just let the court process it?

MR. ROCHE: Well, we just blew it. They had drugs that were associated with it which wasn't collected by way of the intoximeter. It would have been collected by way of blood, or urine.

REP. TULISANO: That's the only test we used to allow. You made us stop it, I don't believe you guys.

No, we used to allow that. No, they said no, we can't do it.

REP. WOLLENBERG: Representative Cunningham.

REP. CUNNINGHAM: Yes, back to the question I was asking earlier, in regard to the use of jail time as a deterrent, do you feel that a two week jail term would act as a deterrent to people committing the offense?

MR. ROCHE: I think what is executed is a deterrent. I do not believe that the first offender should go to jail. I think we have to establish the first offender by way of the alcohol abuser, and the way to do that of course, is

MR. ROCHE: (continued)

to put them through the program, and the second, and if they are arrested again, then at that penalty, I would go for mandatory jail sentence or anything else.

REP. CUNNINGHAM: Right, but actually the first offender, before he ever gets arrested, might kill someone driving drunk. And if you could prevent that first offense from occurring by deterring it, I think that's the basic objective. The present thing does not create a deterrent to the first offense. A person may learn and it may have an effect on a later offense, but it does not deter the initial offense. And I think that's something we have to consider, is deterring that first time.

MR. ROCHE: I think you would be, you would really be trespassing on perhaps, you have 70% of society drinks. 10% of the drinking population create about 70% of all the problems in the alcohol abuse. If in fact you're willing to step on that full 70%, you'll have a chaotic situation, so I would be a little reluctant, on behalf of law enforcement, I'm also on the executive board of RID, and there's a different philosophy that they should go. So I'm talking from both sides. On behalf of law enforcement, I do not think that the first offender that hasn't killed anybody or anything else, just picked up off of the highway, should have to go to jail.

REP. CUNNINGHAM: Well, of course, then again, operating the law enforcement, if such a law deterred 90% of those first offenders, we wouldn't need as many people law enforcement.

MR. ROCHE: We have a lot of other problem. We don't only deal in driving.

REP. CUNNINGHAM: Okay.

MR. ROCHE: I think you'd have some new problems.

REP. CUNNINGHAM: Okay, thank you.

REP. WOLLENBERG: Questions? Thanks, Frank. Is it Monte Berry? Monte Berry. Frank Piccolo.

M A D D
Mothers Against Drunk Driving
P. O. Box 3384
Westville Station
New Haven, Connecticut 06515

1826

Dear Members of the Judiciary Committee,

(HB 5429)

I am the president of the New Haven chapter of MADD. I am asking you as my legislators to please pass the "Per Se" law. I also am a registered nurse in the largest emergency room of a hospital in Connecticut. Since March 1, 1985, one-third of all drivers involved in motor vehicle accidents have been legally intoxicated with blood alcohols greater than 100% with some levels as high as 420%. But of these patients, the local police were present for only three of them! With an active "Per Se" law all of these drivers would have an automatic conviction for drunk driving. Our streets and highways must be made safer! Please pass the "Per Se" Law and help innocent people.

I would also ask you to enforce 30 day license suspension of any one assigned to the Pre-trial Rehabilitation Program, as well as MANDATORY fines and jail terms for the repeat offender.

Thank you very much for your concern and support.

Sincerely,

Janice Heggie

Janice Heggie



CONNECTICUT TRAUMATIC BRAIN INJURY ASSOCIATION, INCORPORATED

1800 SILAS DEANE HIGHWAY, SUITE 222
ROCKY HILL, CONNECTICUT 06067
PHONE (203) 721-8111

TESTIMONY HB5429

LORNA W. STROM
Executive Director

Connecticut Traumatic Brain Injury Association, Inc.
Monte Rae Berry
Dir. Legislative Affairs

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Lee Stang
Robert P. Urban

Shelby V. Warner
Carissa M. Whitcomb

On behalf of the Members, Directors and Staff of Connecticut Traumatic Brain Injury Association, Inc., I would like to thank the members of the Judiciary Committee for the opportunity to testify today.

A majority of Connecticut Traumatic Brain Injury Association's clients are the product of the carnage on Connecticut's highways. Our organization is now conducting an epidemiological survey to accurately determine the incidence of traumatic brain injury (TBI) and the causations in Connecticut.

Current estimates of severe TBI in Connecticut range from a very conservative 1,000 per year to a figure of 6,000 given by some health care personnel. Over 60% of the injuries are motor vehicle accidents, primarily involving the automobile; 10% are assault and gunshot related; 16% are the result of falls. The single most significant contributing factor in these accidents is the use of alcohol or drugs (60% has been cited by our Educational Consultant in her collection of hard data).

A frightening statistic from the National Safety Council states that one out of fifty cars coming at you on the highway has a drunk driver behind the wheel - a driver with at least a .10% blood/alcohol level. On Friday and Saturday nights that number jumps to one out of ten!

Head injuries are the most frequent cause of death in auto accidents, causing 47.7% of fatalities. Head injuries are also the most frequent cause of lasting and irrevocable disabilities, precluding a person's return to a normal life.

According to the National Institute of Neurological and Communicative Disorders and Stroke, the federal agency responsible for research on head trauma, "because the victims of head trauma are usually young people, the cost to society is high - almost \$4 billion annually. This figure includes the direct expense of medical treatment, indirect costs of rehabilitation and support services, and the patient's loss income."

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CTBIA Testimony HB 5429

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Motor vehicle accidents causing traumatic brain injuries must stop. With each person who is miraculously saved from death by heroic medical measures, a system that is already woefully inadequate to care for brain injured persons in Connecticut is further taxed.

We urge you to pass Bill # 5429 An Act Establishing A "Per Se" Standard For Operating A Motor Vehicle While Under The Influence Of Intoxicating Liquor. One important step on the road to prevention of traumatic brain injury.

TESTIMONY BY DONALD J. McCONNELL, EXECUTIVE DIRECTOR, CONNECTICUT ALCOHOL AND
DRUG ABUSE COMMISSION ON SB 528, 531, 917, 956, HB 515⁸, 5429, 5638, 5907,
6275, 6602, 6702, 6829 and 7433.

PUBLIC HEARING
JUDICIARY COMMITTEE
APRIL 8, 1985

GOOD MORNING, MY NAME IS DONALD McCONNELL AND I AM THE EXECUTIVE DIRECTOR OF
THE CONNECTICUT ALCOHOL AND DRUG ABUSE COMMISSION. I WOULD LIKE TO SPEAK
TODAY ON SEVERAL OF THE BILLS BEFORE YOU.

DRIVING WHILE INTOXICATED HAS BEEN A MAJOR CONCERN OF THE COMMISSION FOR MANY
YEARS. WE HAVE INITIATED, PARTICIPATED IN AND ASSISTED A MULTITUDE OF EFFORTS
DIRECTED TOWARD ENFORCEMENT, PREVENTION, LEGISLATION AND TREATMENT RELATED TO
THE PROBLEM, INCLUDING THE DEVELOPMENT AND ADMINISTRATION OF THE PRETRIAL
ALCOHOL EDUCATION SYSTEM. I WAS ALSO A MEMBER OF THE GOVERNOR'S TASK FORCE ON
DWI.

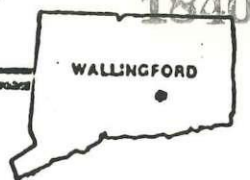
AFTER SEVERAL YEARS OF STATUTORY CHANGES, WE BELIEVE CONNECTICUT NOW HAS A
SYSTEM IN PLACE AND THAT LEGISLATIVE EFFORTS SHOULD BE DIRECTED TOWARD
ENHANCING AND FINE TUNING THAT SYSTEM. SEVERAL BILLS ON TODAY'S AGENDA, AS
YOU KNOW, ARE IN LINE WITH PROPOSALS SUBMITTED BY GOVERNOR O'NEILL. ONE OF
THESE IS HB 5429 WHICH CREATES A PER SE STANDARD OF INTOXICATION. WE URGE
YOUR SUPPORT FOR HB BILL 5429.

CONNECTICUT IS LONG OVERDUE IN ESTABLISHING A PER SE LAW AND IS ONE OF THE FEW
STATES WHICH DOES NOT HAVE SUCH A LAW. THIS LEGISLATION ENHANCES OUR
ELIGIBILITY FOR FEDERAL FUNDING.



FRIENDS DON'T LET FRIENDS DRIVE DRUNK

A CITIZENS' PROJECT TO REMOVE INTOXICATED DRIVERS
17 FRITZ PLACE
WALLINGFORD, CT 06492
(203) 265-6216



(HB 5429)

Feb. 1, 1985

Dear

Please help change the odds to be in favor of the innocent victim. Please we need a "Per Se" law. We have to stop these needless injuries & deaths. We have to shift sympathies away from the drunk driver and over to his or her victim. Illegal per se means it's an offense to drive or otherwise be in control of an auto with a 0.10 percent or greater BAC. It makes it easier and much SAFER for arresting officers to structure drunk driving cases. The officers no longer have to follow motorists committing dangerous acts in order to document the violations. Little supporting testimony of dangerous driving is necessary as evidence in court if illegal per se is used in every state. A driver with a BAC of 0.10 % is 6 times more likely than a sober one to have an accident. Studies have shown, that the more serious the crash, the higher the drinker-driver intoxication level. Please fight for the Constitutional Rights of the innocent victims. Thank you ever so much. Please care for the People you represent.

Sincerely,

Nancy - President

Jim Ricci

Wallingford RID



FRIENDS DON'T LET FRIENDS DRIVE DRUNK

A CITIZENS' PROJECT TO REMOVE INTOXICATED DRIVERS
17 FRITZ PLACE
WALLINGFORD, CT 06492
(203) 265-6216



April 8, 1985

Public Hearing - Judiciary Committee
April 8, 1985 (HB 5429)

Drunk Drivers are a Very Serious and
Horrible Problem and NO one is
SAFE from the Drunk Driver Day or Night

1/2 the people in this room within their life
time will be affected by the Drunk Driver.

The longer you take to get RID of the
probable causes, the higher the odds will
be. We have to have "Per Se", Mandatory
Sentences, ^{Repeat offenders} Tougher Program Admission & Standards.
Automatic & longer Suspensions. The minute
the Drunk Driver turns the key & drives the
car, he is committing a CRIME. Its against
the LAW to Drive Intoxicated. Its not any-
ones Right to Drive, its a Privilege we all
earn, when its abused it has to be taken
away. By making everyone aware of the
danger & effects Drunk Drivers have on
ALL of US. By Having LAWS That ARE
Enforced. We Are Finally SAYING NO to
the Drunk Driver!

H-398

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1985

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PART 10

3293-3715

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Thursday, April 25, 1985

WATER LAWS AND REGULATIONS. The Committee has met, feels the bill should pass but must first be referred to Committee on Finance, Revenue and Bonding.

SPEAKER VAN NORSTRAND:

So ordered.

CLERK:

Mr. Speaker, I have business from the Senate in accordance with a petition. Matter Reported in Accordance with petition, no recommendations by the committee. Senate Bill 198, AN ACT ESTABLISHING A PILOT PROGRAM TO PROVIDE SENIOR CITIZENS WITH TRANSPORTATION TO GROCERY STORES.

SPEAKER VAN NORSTRAND:

Tabled for the Calendar and printing.

CLERK:

I have in front of me Mr. Speaker, an unfavorable report. Matter reported in accordance with petition. It is Senate Bill 17, AN ACT TERMINATING THE MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM.

SPEAKER VAN NORSTRAND:

Tabled for the Calendar and printing.

CLERK:

Petition No. 13. In accordance with the provisions of Joint Rule 19, the Committee on Judiciary

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House of Representatives

Thursday, April 25, 1985

respectfully requests it to report to the House of Representatives, House Bill 5429 entitled, AN ACT ESTABLISHING "PER SE" STANDARD FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

SPEAKER VAN NORSTRAND:

Referred to the Committee on Judiciary.

CLERK:

I have a list of bills being a list of bills for first reading and referral to the appropriate committees No. 67 dated April 25, 1985.

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Jaekle.

REP. JAEKLE: (122nd)

Mr. Speaker, I move that we waive the reading of the list of bills and that they be referred to the committees as indicated.

SPEAKER VAN NORSTRAND:

Motion is to waive the reading of the list of bills and refer to the committees indicated therein. Is there any objection? Seeing none, it is so ordered.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

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1985

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6353-6728

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House of Representatives

Thursday, May 16, 1985

referred to us from the floor. Therefore, we will meet Tuesday, half an hour before the session. Thank you, Mr. Speaker.

REP. MEYER: (135th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Alice Meyer.

REP. MEYER: (135th)

Thank you, Mr. Speaker. For purposes of an announcement?

DEPUTY SPEAKER BELDEN:

Please proceed, ma'am.

REP. MEYER: (135th)

The Planning and Development Committee will meet to review bills referred to it from the floor on Tuesday at 10:00 in a room in the east wing. Thank you.

DEPUTY SPEAKER BELDEN:

Are there any other announcements or points of personal privilege at this time? If not, will the clerk please return to the call of the Calendar.

CLERK:

Page 29, Calendar No. 579, House Bill No. 5429,
File No. 687, AN ACT ESTABLISHING A "PER SE" STANDARD
FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE

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OF INTOXICATING LIQUOR. No recommendation by the
Committee on Judiciary.

REP. WOLLENBERG: (21st)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Richard Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, I move that we reject the Unfavorable
Report of the Committee.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg, the Calendar indicates that there
was no recommendation from the Committee on Judiciary.
The bill is before us as a petition matter so I believe
you can move either to accept or reject the matter.

REP. WOLLENBERG: (21st)

Mr. Speaker, inasmuch as it is treated as an
unfavorable, I rule that we accept the unfavorable
report.

DEPUTY SPEAKER BELDEN:

The motion is to accept the Unfavorable Report.

REP. FARR: (19th)

Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

Rep. Robert Farr.

REP. FARR: (19th)

Yes, Mr. Speaker, I would urge that we overturn the Unfavorable Report although there hasn't technically been a report. I think the per se bill that is before us is the single most important bill we will deal with this session dealing with drunk driving.

And let me tell you, take a minute to tell you why it is so important for this Chamber to consider this bill.

In the past when we have had discussions about drunk driving we have been told that we should have a comprehensive plan that we ought not to deal with drunk driving in a bandaid fashion, piecemeal by piecemeal. I agree with that. The President agrees with that; the Governor agrees with that; Congress agrees with that. The President appointed a task force on drunk driving.

That task force recommended as an essential to effective drunk driving legislation the enactment of per se legislation. The Governor appointed a blue ribbon panel on drunk driving. That panel recommended as essential to the effective enforcement of drunk driving

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passage of per se legislation.

Congress has enacted a bill dealing with drunk driving legislation rewarding those states that take appropriate action. And an essential part of what they define as appropriate action is the passage of per se legislation.

Forty-two other states have decided that it is indeed essential to have per se legislation to have effective drunk driving laws. In this state, the state's attorney has urged the adoption of per se legislation. The police chiefs have urged adoption of per se legislation. The state police have urged adoption of per se legislation.

The issue before this Chamber tonight is whether we are going to consider such legislation. We are not going to be able to have a debate tonight on the pros and cons of the specific bill. But what we have to decide is with so many bodies feeling that this is the cornerstone to effective drunk driving laws in Connecticut, whether we ought to consider it.

And let me just take a minute to clear up a couple of misconceptions about per se legislation. The reason it is so absolutely essential to have per se legislation

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is because it deals almost exclusively, or it applies almost exclusively, to repeat offenders. Unlike some of the other bills we have had that affects all members of our society, per se legislation will apply primarily and almost exclusively to those people who have previously been arrested for drunk driving. It does not, it does not affect to any large degree those people who are charged for the first time with the charge of drunk driving.

So those of you who have had concerns about us passing tough laws that are going to affect the social drinkers in our society who get caught once in their lives, this is not a law that you ought to be concerned about. Because those people will be going through the alcohol education program and this bill will have no substantial impact on them.

And let me just take --

DEPUTY SPEAKER BELDEN:

Rep. Farr, I would remind yourself and other members of this Chamber that we will hold strictly to the issue at hand and not debate the bill this evening.

REP. FARR: (19th)

Right. Thank you, Mr. Speaker. The issue at hand is whether or not this body is going to entertain debate

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on a piece of legislation that is absolutely essential for effective drunk driving laws of this state. A piece of legislation that was part of the Governor's package of recommended laws. A law that was described as essential by most of the advocates of effective drunk driving laws in the State of Connecticut.

I would urge this body to vote to overturn the unfavorable report, although I would point out that there in fact has not been a Committee report, but to overturn the motion to reject the motion, to vote yes, so that we can, in fact, thoroughly examine this issue.

And, Mr. Speaker, I think that this bill is essential and this, in fact, could, in fact, be the final action on this bill and I would ask therefore that when the vote be taken it be taken by roll.

DEPUTY SPEAKER BELDEN:

A roll call will be ordered at the appropriate time because of the fact that it may very well be a final action.

REP. TAYLOR: (79th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Taylor.

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REP. TAYLOR: (79th)

Thank you very much, Mr. Speaker. I rise to join with Rep. Farr and ask that this body overturn the unfavorable report and let's bring this bill before this Chamber for debate.

Last night I was extremely disappointed to see that the State Senate refused through same measure to debate a bill dealing with a constitutional amendment. I thought that was wrong; I think this is wrong also.

It's a very important bill. We have dealt with a number of issues so far this year regarding drunk driving. We have made many changes in our DWI laws. This is a bill which many feel will have as strong an impact upon our drunk driving problem as any. To not debate this issue before this Chamber I believe would be a dereliction of our duties as we were elected to do so.

Many of us are not on the Judiciary Committee. Many of us have not had an opportunity to listen to the debate, to listen to the facts about the per se legislation, and to make a decision on behalf of our constituents. I think we owe it to them, we owe it to each other. I think we should overturn the unfavorable report and

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bring this bill before this Chamber for a full debate.

DEPUTY SPEAKER BELDEN:

Will you remark further? If not, --

REP. KRAWIECKI: (78th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, without dealing very much on the subject matter, I want to point out to the body the procedure that will occur should this item be overturned. And that is that it will be returned to the legislative commissioner's office, will not be debated this evening under Joint Rule 20. And that may or may not play into some of your decision making.

DEPUTY SPEAKER BELDEN:

Will you remark further?

REP. WOLLENBERG: (21st)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, the arguments that are being made here this evening that we ought to debate this. There

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are many bills we don't get to debate. Maybe fortunately. And I don't place quite as much faith in this law in the matter that we should debate, people say, as some of the previous speakers.

I don't know if there is any statistics on this. There have been a lot of claims made. But this isn't any different than any other bill that Rep. Taylor or anyone else may not have an opportunity to see the light. We've seen that happen many, many times. The first thing that is said is, Gee, just let's have it printed. Let's have a public hearing. Let's get it out there. Let's let everybody, and all of a sudden we come to this position on something as important as this by a circuitous route.

This bill has been heard time and time again. It's nothing new. The previous speakers seem to know all about it. Talk about Congress and the President and all these other bodies. I don't know that we have taken our lead from those bodies. As might be suggested tonight that we all roll over and do that.

I am not particularly impressed with that. What I am impressed with is people want to debate a law that says you need not know but you're going to be guilty and that's bad law. And I can point my finger 151 times here

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and it's each and every one of us. And I don't think this Chamber need take up the time to debate something as basically wrong as that.

And what is basically not going to do the job people think it is. When this bill comes back, if it does, you are going to see a financial statement on that bill, a note on that bill. If it's a true note, it is going to cost millions of dollars. And we can get into that in the debate on the bill.

No one has told us in any of the reports how many lives have been saved by per se. It's wrong, it's not the kind of law that this country is based upon. And what we have done this year alone in drunk driving should allow us to preclude going through this other exercise.

We have adopted a bill that tightens manslaughter with a motor vehicle, assault with a motor vehicle. When a bill comes out Appropriations with increased penalties, a two-day jail sentence, loss of license is an extreme possibility for a month, even though you go into the program by a bill that's here. We should be talking about those bills.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg, I please caution you to stay close to the issue at hand as possible.

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REP. WOLLENBERG: (21st)

I'll try, Mr. Speaker. But these are all reasons I believe that we should not go any further with this bill. A raise in the drinking age, earlier this evening, earlier closing hours of bars. On all these things I heard it's going to save lives because it effects drinking. Is this the only ill we have? It's a very serious one. But we've done a lot this year. We don't need to do any more. It does not need to go any further.

There has been no concrete evidence that just because you're point 10 you can't operate a car. The worse thing is, and I point my finger 151 times again, don't get down there and have two beers because you may be point 10, even 1 --

REP. FARR: (19th)

Point of Order, Mr. Speaker. I think --

DEPUTY SPEAKER BELDEN:

Rep. Farr, what is your point of order, please.

REP. FARR: (19th)

My understanding is we are trying to limit ourselves as to whether we ought to hear the bill. And I was told that I had to restrict my remarks and I hear Rep. Wollenberg explaining the merits of the bill. And I

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don't know how I can not respond to those comments.

DEPUTY SPEAKER BELDEN:

Your point is well taken, sir. Rep. Wollenberg, would you please --

REP. WOLLENBERG: (21st)

Yes, I will, Mr. Speaker. I just thought that perhaps what was good for the goose would be good for the gander. And at least Rep. Farr would not point that finger at me. Maybe somebody else. I see Rep. Stolberg about to stand up and he may be right. But Rep. Farr to do it goes a little far. I have nothing further only to say think about this before you do it. And don't listen to people who have been trotting around this Chamber and whispering in people's ears and gathering in little cliques here and there, buzzing about per se, as the saviour. It's not.

REP. NYSTROM: (46th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Nystrom.

REP. NYSTROM: (46th)

Thank you, Mr. Speaker. I rise to ask this body to overturn the Committee's unfavorable report. I think

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this bill should be debated. For the many reasons Rep. Wollenberg just stated, I think they bear and need much more discussion. I think he added to the argument to overturn the Committee's unfavorable report and did not detract from it. Thank you.

REP. WARD: (86th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Ward.

REP. WARD: (86th)

Mr. Speaker, being very brief I would just ask this Chamber to very seriously consider as Rep. Wollenberg says, and urge that you overturn the unfavorable report so that we can address the serious question of whether per se works or not. I disagree with Rep. Wollenberg on this issue. I think it will work for the state. I won't try and address the merits of that but I would like to be given the opportunity to address those merits and I would urge that you overturn the report so we may address them.

REP. STOLBERG: (93rd)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Stolberg.

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REP. STOLBERG: (93rd)

Mr. Speaker, I wouldn't have cut off Rep. Wollenberg for anything. But I'm not going to even take as much latitude as he did. Let me just say that in my opinion per se is one of many tools that we have available to address a very major problem in this society and that is drunk driving.

I've travelled in many other parts of the world where people absolutely do not drink if they are going to drive. And I think that's a pretty healthy attitude about drinking and driving and that's why mothers and children and others who have lost members of their family care enough for this to have become an important issue.

I would argue that we overturn the unfavorable report primarily because it has been debated before, but not before this legislature and in some ways unfortunately this legislature has a lot of new members who have not participated in the debate before. And I think they deserve that opportunity. I think the arguments for and against should be brought out. I think this bill should go the legislative commissioners, be brought back to us in a form that we can have the pros and cons and have an up or down vote on it.

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I would urge now that we do restrict ourselves to merely whether we send it to the LCO and it comes back and not transgress a little further into the debate that I hope we will have with some curtailment next week. Thank you very much.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, unlike Rep. Stolberg, I will give my own, his advice to myself, and that is to restrict it whether it should go up and down based on the comments of the two of the proponents, Rep. Farr and Rep. Taylor.

Before that decision is made in each and every person's mind, remember what Rep. Taylor said, a number of people were not here, let us have the debate so we may have and make a decision. I hope Rep. Taylor and others who he was addressing his remarks to who are trying to make a decision today, as well as Rep. Stolberg and others will really do that with an open mind.

If that were the case, that they would then listen to a debate and make a decision based on the merits, I

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suppose they should vote to overturn. However, if they have already made up their mind and know whether the bill is good or bad, then that's really a fallacy. I would encourage them, if they are going to vote that way, that they do, in fact, open their minds and do that. But if they are not prepared to open their minds, then the whole argument for overturning is inappropriate.

And with regard to Rep. Farr's comments initially, that it will not affect the first time individual who has been accused, and I point out accused not necessarily an offender, it certainly will. It will require more, it will, allegedly, make more individuals force them into the alcohol education program who may never have opted to go into it in the past. That may be something you want to do when you get to making your decision. But that is what will occur.

And that means any of those individuals who decide to go in there because they have been forced to go in under this new law, will then be treated as a first offender should it ever happen again, the penalties for which are concurrent with our old penalties for second offenders. So you do shift somewhat what is going on out there. And you should do that and make

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your decision based on this kind of knowledge. Thank you, Mr. Speaker.

REP. BARONIAN: (20th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Baronian.

REP. BARONIAN: (20th)

Mr. Speaker, I rise and ask this body to overturn the unfavorable report from the Judiciary Committee. Actually, this is a bill that was not ever voted on in our Committee. It was not on our agenda in the final days. We tried, attempted at the last minute to try to get those of us who support per se, attempted to have this brought before the Committee. Our deadline was reached and we were not able to do it.

I really believe that this body deserves to hear the debate. And I refuse to debate this now because the issue at hand is to overturn the unfavorable. And I ask each and every one of us to bring this bill before the Committee, before this body, after it's gone to LCO and give this a good airing because this is something that this body has had before us for several years and I think it's time that we had it, once again, and we

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debated it, because there may very well be new evidence that should be brought before us and heard. A very substantive issue that should be heard. I urge your support to overturn the unfavorable. Thank you.

REP. BLUMENTHAL: (145th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Thank you, Mr. Speaker. I rise in favor of overturning the unfavorable report and I will make simply a number of very simple points because the issue before us is quite a simple one, which is whether or not we are going to have an opportunity to debate this question.

I want to assure those of you who think that we are going to have a repeat of past debate, that that will not occur. It won't occur, not because we have a different legislature or necessarily because there is different evidence of the wrong that we are trying to right, but we have a different bill. It is a bill that is different from the ones that we have considered in past years and it's going to be different, I hope it will be different even from the one that you have before

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you in the file copy.

I think that we have before us the challenge of framing a law that addresses this issue effectively and forcefully and will at the same time guarantee basic fairness and meet the concerns that are going to be raised, I hope, in the debate that we will have.

And I say to you that the concerns that you will hear expressed are not frivolous or imaginary. They are real and valid concerns in terms of assuring people basic fairness and providing an evidentiary standard that improves the law that we have now. Not just to the benefit of those who are prosecuting, but also to the benefit of those who may be prosecuted.

So I ask on behalf of overturning the unfavorable report that you give all of us an opportunity to debate this bill and to improve this law. Thank you.

DEPUTY SPEAKER BELDEN:

Will you remark further? If not, the Chair will explain the vote.

The bill is a petition bill out of the Judiciary Committee. There was no recommendation made by the Committee. Therefore it is treated as an unfavorable report. The motion was made to accept the unfavorable

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report. A yes is a no, and a no is a yes. A yes will return the bill, kill the bill for the year. A no will keep the bill alive and under Joint Rule 20 it will be sent to LCO for necessary drafting and to go through the process.

Staff and guests please come to the well of the House. An immediate roll call is ordered. The clerk will please announce the roll call.

CLERK:

The House of Representatives is now voting by roll.

All members please return to the Chamber immediately.

The House of Representatives is now voting by roll.

All members please return to the Chamber immediately.

DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded. If so, the machine will be locked. The clerk will take the tally.

Clerk, please announce the tally.

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CLERK:

House Bill 5429, a motion to accept unfavorable report.

Total number voting	146
Necessary for Acceptance	74
Those voting yea	43
Those voting nay	103
Those absent and not voting	5

DEPUTY SPEAKER BELDEN:

The motion to accept the unfavorable report fails.
The matter in accordance with Rule 20, rather the House Bill 5429 will now be referred to the Legislative Commissioner's Office in accordance with Joint Rule 20.

CLERK:

Page 25, Calendar No. 358, potential disagreeing action, Substitute House Bill 7628, File No. 713, AN ACT CONCERNING THE RATE TREATMENT OF LANDS PURCHASED, OWNED OR RETAINED BY WATER COMPANIES FOR FUTURE WATER SUPPLY USE. (As amended by House Amendment Schedule "A" and Senate Amendment Schedule "A"). Favorable Report of the Committee on Energy and Public Utilities.

REP. JAECKLE: (122nd)

Mr. Speaker.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
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SPEAKER VAN NORSTRAND:

Thank you. Is there business on the Clerk's desk?

CLERK:

There is the Calendar, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The Chair would state for the benefit of the members, because I know it is important to you, it is a Saturday and I recognize family obligations, community obligations. There are 11 items on the go list. We are starting promptly at 11:00. We will depart when the 11 items depart. Will the Clerk please commence the Call of the Calendar?

CLERK:

House of Representatives, Calendar for Saturday, June 1, 1985, Page 17, Calendar No. 579, House Bill No. 5429, matter returned from the Legislative Commissioner, File No. 1130, AN ACT ESTABLISHING A "PER SE" STANDARD FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, no recommendation by the Committee on Judiciary.

REP. FARR: (19th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Robert Farr.

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REP. FARR: (19th)

Yes, Mr. Speaker, in this matter, the House has already rejected the Unfavorable Report. I therefore move for adoption of the bill.

SPEAKER VAN NORSTRAND:

The question is on passage of the bill. Will you remark?

REP. FARR: (19th)

Yes. Mr. Speaker, this is the so-called per se legislation that has been before this House before. It is probably one of the most significant pieces of legislation that we will see dealing with the issue of drunk driving. It's significance is largely as a result of the fact that this bill deals primarily with those individuals who are multiple offenders.

The per se legislation has its impact upon those people who have already been through the alcohol education program, who get arrested the second time, and are then prosecuted as a first-time offender for driving under the influence. This particular piece of legislation is a recommendation of the Governor's Blue Ribbon Task Force on Drunk Driving, the President's Commission on Drunk driving, is part of the Congressional

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requirements in order to get full funding from Congress. It is a recommendation of the State's Attorney's office, the State Police, the Police Chiefs Commission, and all of the advocates of drunk driving.

And legislation similar to this is already in effect in 42 other states in this country. I would urge adoption of the bill.

SPEAKER VAN NORSTRAND:

The question is on passage of the bill. Will you remark? Will you remark?

REP. WOLLENBERG: (21st)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. William Wollenberg.

REP. WOLLENBERG: (21st)

Looking around the sparse Chamber, congratulations. I think you brought the right one. I think we'll get moving. I rise to object to this bill, and ask you to defeat it. And there's one basic reason why per se should be defeated. And that's because it goes to the very essence of justice and we know it in the United States. One of the reasons we're here today. One of the reasons our forefathers came here and left us a

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legacy of this country.

It was because just due to the fact that a police officer arrests you and, as we have progressed through the years, just because he has a machine now that says if you blow into this certain machine and it says that the alcohol content in your breath, in your blood, is .10 that you shouldn't be driving a motor vehicle. I think it takes away the very basic premise that that shouldn't make you guilty.

And that's what per se does. Per se says you're guilty. What this is going to do in the court, and I think the fiscal note speaks to it, is cause the same problem we had back in I guess the early 70's when first arrests for drunk driving, first convictions for drunk driving meant loss of license. Well now we know we've changed that and you can get arrested three times for speeding. I'm sorry. Speeding means loss of license. You can get arrested three times for speeding and you don't lose your license until the fourth time. You can even mail in a fine.

Well, the reason we had to change all that was because the courts were so clogged with speeders seeking to protect their license, seeking to have trials, that

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about once a month the judge would come in and send everyone home. The person was going 120 miles an hour in the school as well as the person that was going 60 miles an hour on I-84. They just couldn't handle it. And that's what we're going to lead to with this.

Let me just tell you, and I know most of you know, but for the record, this is what happens now. An individual gets stopped by a police officer. He is asked to take the test. He may refuse to take the test or he may agree to take the test. If he refuses to take the test, our statutes say he loses his license for six months. Before he loses his license, however, he has an opportunity to have a hearing before motor vehicle to find if there was probable cause for the arrest.

An attorney now should advise his client not to take the test. Because, as we know, in spite of this little chart that was passed around, ladies and gentlemen, if I have seven drinks and that's what this says I can have, I can't walk let alone drive. So we know that that's rubbish. But if someone gets stopped and says to me should I take the test, I'm going to say no. That means we're going to have a hearing before the Motor Vehicle Department to determine probable cause

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whether or not I should have been stopeed.

Half of the time you are not going to, there is not going to be probable cause found. Probably in other cases, the Motor Vehicle won't even send for the license if probable cause is found. This is going to mean we're going to have to beef up Motor Vehicle hearings officers and the fiscal note tells us about that.

Trials are going to increase. The courts are going to become more and more clogged. And .10 does not necessarily mean that you should not be driving. It depends on your weight, as this little chart tells us. It depends upon whether or not you are in good condition, whether or not you are tired, whether or not you are well rested. Many variables. But this Chamber wants to say forget all that; you're guilty.

Well if that's what this Chamber wants to do, and even though it's been, and I'll accept Rep. Farr's statement about 42 states have adopted this. I don't see where it's cut down. I don't see them offering a great many figures to see where it's cut down in deaths due to drunk driving. Per se is not the answer. It's another band-aid. It's part of what everyone in this Chamber wants to do to help decrease deaths because of drunk

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driving. But per se is not the way to go. We've done about six things in this Chamber this year to do that.

We straightened out the manslaughter with motor vehicle while driving under the influence, assault with a motor vehicle while driving under the influence, two major pieces of legislation. We've increased the penalties for offenses of this nature. And other things we've done in this area.

Connecticut has a good drunk driving law. It just needs to be enforced a little better. Let's send that message down. Let's not send this message down. We've got something that really doesn't make any sense to courts and to people. You're going to clog up the courts. You're going to spend a lot more money. Take a look at the fiscal note before you vote on this. And it still is not going to work.

SPEAKER VAN NORSTRAND:

Will you remark further on the bill?

REP. ARTHUR: (42nd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Glenn Arthur.

REP. ARTHUR: (42nd)

Mr. Speaker, there have been a lot of statistics

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quoted about the number of states that have adopted per se laws. I would like to ask of the person who brought this bill out, what those states show as having, what's that accomplished?

SPEAKER VAN NORSTRAND:

Rep. Farr, do you care to respond?

REP. FARR: (19th)

Yes. Mr. Speaker, through you. The per se legislation is intended to be an aid in the prosecution of individuals arrested for driving under the influence. As I'm sure most members of this Chamber are aware, the backlog in the court in Connecticut is larger than any other state in the nation. The per se legislation has been enacted in other jurisdictions and the representation has been that it has reduced substantially the backlog of prosecution for drunk driving because they don't have to have extensive trials on the issue of whether or not somebody with 11 drinks was intoxicated or not.

REP. ARTHUR: (42nd)

Mr. Speaker, another question.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

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REP. ARTHUR: (42nd)

I don't believe he answered my question. Has it, in fact, reduced by statistics the effect of drunk drivers on the highway in other states?

SPEAKER VAN NORSTRAND:

Rep. Farr.

REP. FARR: (19th)

Through you, Mr. Speaker, to Rep. Arthur, I don't think anyone represented, or I certainly haven't claimed, that the mere passage of per se legislation is going to come up with such marketable statistics that you can easily measure the difference of this or any other drunk driving legislation. We know other states that have had drunk driving enforcement and crackdowns have had reductions of fatalities. Sometimes this reduction sticks; sometimes they don't.

I can't represent to you that this bill will give you a 10% reduction in drunk driving offenses. Or a 2% or a 5%. All I can tell you is that those people who support this legislation, including the State's Attorney's office, have said that this bill substantially reduce the delays in prosecution for drunk driving.

REP. ARTHUR: (42nd)

Through you, Mr. Speaker, so this per se law is

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reducing the court cases. And there is no information that it will really effect the cases or the number, statistics of accidents that involve drunk driving?

SPEAKER VAN NORSTRAND:

Rep. Farr.

REP. FARR: (19th)

Through you, Mr. Speaker, I cannot give you statistics that show that any drunk driving legislation in any state at any time can scientifically be shown to give a certain effect. No, I can't represent that to you on anything we've passed, that any state has passed. Because the number of fatalities and accidents vary for a great variety of reasons. And I can't represent to you that there has been a substantial change in the fatality rates in other states because of this because normally when this bill has been passed in other states, it's been part of a package that included other legislation. And included increased police patrolling, increased enforcement, etc. And to try to separate out the impact of one piece of legislation statistically to my knowledge has never been done.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

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REP. ARTHUR: (42nd)

A further question or scenario. After a long, hot session here at the Capitol, I decide to have a can of beer because it's hot. And I don't particularly like beer. But I sort of chug-a-lug it like I would a glass of water. And I sit down and, in sort of relaxing, have a second beer. And then I decide to go out and get in my car and go home. And this has probably taken place over 10 minutes, 15 minutes.

And the little chart says, I don't know, I guess I can drink six beers. I'm not even sure what the chart says. But, at the end of the Capitol driveway here, they have a roadblock. And they test me and, in fact, the breath analyzer says .1 or greater. Now I know that I am not intoxicated, but the time factor, regardless of my weight, may in fact indicate that I surpassed that .1. Now what option do I have? I don't take the test. I know I'm not intoxicated. And yet that test is going to prove that I am and I'm going to be penalized.

SPEAKER VAN NORSTRAND:

Rep. Farr, do you care to respond?

REP. FARR: (19th)

Yes. Just so that it's quite clear, the effects

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of drinking and the alcohol content in your blood, what this law says is not that the results of any test in itself is a crime. What this law says is that the amount of alcohol in your blood, if it above .10, become the offense. It's the alcohol content in your blood. If you drink three beers and immediately take a breath test, what will happen under the normal process is that they do not give you a breath test on the scene because they normally wait to give you the breath test to make sure that anything in your mouth is clear.

Secondly, under existing law, you have a right to a second test. You have a right to a urine test. You have a right to a blood test. If there's any question about the validity of the first test and you know that for some reason that test is not accurate, you have a right to a second test. Even if that test were not measured above .10, you still have a right to contest the validity of those results. If you can show that, for some reason, that test result was not accurate, this law doesn't in any way take away your rights to test the validity of that test.

What the law says is that the issue becomes whether or not you had .10 or above alcohol in your

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blood. If you did, then that becomes an offense. Under the existing law, if you had .10 or above, it would raise a presumption that you were intoxicated. But if you had, as that chart shows, if you had eight beers in an hour, and that alcohol was in your blood, and you went out and drove, and it measured .12, and you would now under existing law have a right to say well I can handle eight beers in an hour and drive safely. And then there would be a trial on the issue of whether you were intoxicated after having eight beers in an hour, or whether or not you could handle your liquor to the extent that you could handle eight beers in an hour.

What this law says is, if you had those eight beers, and your alcohol content got above .10, that becomes the offense. And the question becomes whether or not those tests are accurate, or whether or not you actually had that much alcohol in your blood. But if you do, then that becomes the offense. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

REP. ARTHUR: (42nd)

Another question, then. Maybe I don't

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understand. You keep saying blood alcohol content. And I assume a breathalyzer does not measure that. It measures your breath. So, would you please explain the difference between the breathalyzer test which certain does not measure your blood content.

REP. FARR: (42nd)

Yes.

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. FARR: (42nd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Farr.

REP. FARR: (42nd)

I am not an expert and don't pretend to be an expert on the operation of the breath test in Connecticut. The validity of it has been upheld by the courts after evidence of the scientific accuracy of the test. But my understanding is that the test measures the alcohol in your breath when you exhale. That alcohol in your blood is exchanged with the air in your lungs, and that the measure of the alcohol in your breath is an accurate, scientifically accurate, measurement of the

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alcohol in your blood.

So that the breath test is, in fact, measuring the alcohol content of your blood. That's the scientific determination for that. The courts have said that, yes, that is true, accurate. And Connecticut has upheld the breath test as a means of accurately measuring your blood content.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

REP. ARTHUR: (42nd)

So if, in fact, I did have those two beers in about 15 minutes, there's a possibility if the timing was right that I would surpass that blood alcohol content?

SPEAKER VAN NORSTRAND:

Rep. Arthur, through the Chair.

REP. FARR: (19th)

Mr. Speaker, through you, no. Through you, Mr. Speaker, it is not accurate that a quick consumption of alcohol could in any way increase the breath test if it were properly administered. The administration of a breath test requires a certain 20-minute waiting period before they administer the test which clears any of the alcohol out of your mouth and your throat. The alcohol

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in your stomach will not in any way effect the breath test.

And, in fact, if you drank 12 beers and then took a breath test 20 minutes later, chances are you wouldn't be above .10 because the alcohol has to get into your system. It's a measurement of the alcohol in your system. And it might take a half hour for that alcohol to get into your system. So, in fact, a quick test after a drink 20 minutes after you've been drinking might actually show a lower alcohol content than you would expect based upon the consumption because it hasn't yet gotten into your system. Breath test measures the alcohol content in the blood as it exchanges with the air in your lungs. And there is a delay period before the test is administered. And so it doesn't measure the alcohol in your stomach; it measures the alcohol in your lungs.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

REP. ARTHUR: (42nd)

Thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Will you remark further on the bill? Will you

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remark further?

REP. BLUMENTHAL: (145th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Richard Blumenthal.

REP. BLUMENTHAL: (145th)

Yes, Mr. Speaker, in an effort to meet some of the concerns that have been raised and are likely to be raised about this measure, I have an amendment, LCO No. 8031. And I would ask the Clerk to call it and may I be permitted to summarize.

SPEAKER VAN NORSTRAND:

Would the Clerk please call LCO No. 8031, designated House Amendment Schedule "A"?

CLERK:

House Amendment Schedule "A", LCO No. 8031, offered by Rep. Blumenthal.

SPEAKER VAN NORSTRAND:

The gentleman seeks leave of the Chamber to summarize. Is there objection? Seeing none, please proceed, sir.

REP. BLUMENTHAL: (145th)

Thank you, Mr. Speaker. The amendment before us

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has essentially three elements. And all of them are directed to making this bill and this legislation, if it passes, more reliable and more balanced.

The first provision of this amendment would require an additional test within 30 minutes following the first test. It would exclude the admission of the first test, however, only if the police fail to make reasonable efforts to do an additional test of the same type. So that if, in good faith, the police sought to do a second test and, for some objective reason, were unable to perform it whether as a result of the refusal of the potential defendant or for some other reason, the first test would still be admissible.

In the event of a refusal by the potential defendant to take a second test, the same sanctions would apply as would apply in the event of a refusal to take a first test. That is the second component of this amendment.

And the third is that, where the prosecution chooses the traditional or conventional method of proof; that is, where it does not seek to prove simply a per se violation, the admissibility of any test would be only at the request of the defendant. So, in effect, it would

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force the prosecutor to elect at the very outset what method of proof he or she was going to use in proving this crime.

Those are essentially the elements of this amendment and I move its adoption, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The question is on adoption of House "A". Will you remark?

REP. BLUMENTHAL: (145th)

Yes, Mr. Speaker. If I may elaborate further, very briefly, on the reasons for this amendment. Ladies and gentlemen of the General Assembly, in order to understand this amendment, I think you have to understand the bill itself and the statutory scheme that is involved here. Essentially what we are doing if we pass this amendment is to establish, and this legislation, is to establish two methods of proof.

One method of proof is the conventional or traditional method which relies on evidence of behavior. The person couldn't walk straight, couldn't talk correctly, all the observational kind of evidence that would ordinarily be admitted at a trial.

The second method of proof that we would establish

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is what is commonly and what would be called today the per se method which is essentially to rely on blood alcohol content. What this amendment seeks to do is to make the measurement of blood alcohol content as reliable as possible by requiring two tests.

The reason for two tests is that in order to extrapolate back, in order to relate back to the time of the offense, that is the time the person was driving, it is necessary to establish a trend as to whether or not the blood alcohol content was going down or rising. Different people have different capacities. That has been pointed out, will be pointed out again on the floor of this Chamber.

The imposition, the use of two tests, assures that blood alcohol content will be established as reliably as possible at the time of the offense. The incentive to take a second test has to be as strong as the incentive to take the first test, and that is the reason for the imposition of sanctions in the event that the defendant refuses to take that second test, and third as a matter of fairness, the prosecution ought to have to elect at the time he charges the offense which method of proof he is going to use at the outset of the trial, he ought

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to be compelled to select one method of proof or the other, and that is the reason for the third provision in this bill.

Because of its importance to the statutory speediness, Mr. Speaker, I would ask that when the vote is taken, that it be taken by roll call, please.

SPEAKER VAN NORSTRAND:

The gentleman from Stamford has ask that when the vote is taken on House "A" that it be taken by roll.

All those desirous of a roll call vote on House "A" indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER VAN NORSTRAND:

Clearly, sir, the 20% rule has been satisfied, and when the vote is taken, it will be taken by roll call.

Will you remark further?

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Eugene Migliaro.

REP. MIGLIARO: (80th)

Mr. Speaker, a question through you to the

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proponent of the amendment.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

REP. MIGLIARO: (80th)

Rep. Blumenthal, I want to get my impression right on this amendment. Let's take a hypothetical case. Assuming an individual while driving under the influence at a certain point hits somebody or kills somebody and through the officer's inspection on that immediately at that point shows and they derive or they assume or can say from their tests that the individual is driving drunk, under the influence.

A half hour later transporting this individual to a hospital to take a blood test, during that period of time, the blood content or the alcohol content in the blood test reduces, and it comes below .10. You are saying, correct me if I am wrong, that the initial investigation would not count and would not constitute drunk driving after he took the second test which showed his alcohol contents was done. Is that so?

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

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REP. BLUMENTHAL: (145th)

If I understand the question correctly, Rep. Migliaro, on the contrary the second test very likely assuming that the first test was above .10, the second test would establish pretty clearly that there had been a violation because if the blood alcohol content had dropped during the intervening time period, it would be possible to extrapolate back much as you would establish a graph curve and show that at the time the person was driving, the blood alcohol content was above .10. Through you, Mr. Speaker.

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Migliaro.

REP. MIGLIARO: (80th)

Through you, Mr. Speaker, I don't know how to pose this question. What I am trying to get is that if the blood content, alcohol content drops during the period from the time of the initial charge, within that half hour, and in many cases and as ex-police officer, I can tell you, in many cases the blood content, alcohol content, does come down by the time you have the blood

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test taken.

What I am trying to say if it should come down below the .10 and we are going to establish that blood test is what we are going to base our charge on, where it could very well be that individual could have been well above .10 at the time of the incident, but then we are going to say on the blood test, it actually shows it was below .10, would that individual have a course of defense in a court to say I wasn't driving under the influence at the time of impact, because no blood test was taken at the time of the impact, through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. That question really goes to the heart of this legislation, and it is a very good question, and I'll try to answer it as precisely and briefly as possible. The offense, as your question very rightly presumes, is driving while under the influence of alcohol or some other substance, and the offense is at the time the person was driving.

This amendment seeks to assure the most reliable method of proof of that fact, and because in most people,

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the blood alcohol content will be dropping following the time when the person is stopped, the trend can be established through expert testimony very simply, that at the time the person was driving, that is in advance of the first test, it was even higher than at the time of that first test. So that in the hypothetical you posed, where it may have been for example .15 at the time of the first test, and .09 at the time of the second test, expert testimony would establish that it had to have been beyond reasonable doubt above that level, above the .1 level at the time the person was driving.

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Migliaro.

REP. MIGLIARO: (80th)

I understand where the amendment is coming from, but I am a little afraid of this amendment, and I understand what the intentions are, but I think a real good, sharp lawyer, which there are many in this hall right now, can very well take this and use it on behalf of their client. I think if you have established because an individual in many cases when you stop someone who is

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driving drunk or erratically on the road, and you find him driving under the influence or of drugs or booze or whatever the case may be, their first defense has been more often than not that they were incoherent because of shock or because of the accident, and by the time you get them into the hospital and before you can give them that blood test, in many cases the alcohol content in the blood stream has depreciated significantly.

What I am afraid of and I know you are trying to establish in your case if there were people who had an excessive amount of alcohol, that .10 would definitely be established within that half hour. There is no question of that in my mind.

I'm looking at the individual who had that border line who may have been .20 or .40 and then by the time the accident happened had been dropping because after a couple of hours it decreases your alcohol content in your blood stream, still driving really drunk, but by the time the accident happens, and by the time that half hour comes, it could very well be below the .10, and on that basis, I think a good defense lawyer could say now just a minute, we have to go by the blood test, and this test shows that it was only .07, and even though you cannot

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assume in a court of law, which I am sure you are aware of that the person was driving with .10 or higher. I think that the amendment is well intended, but I have some fears of it and reservations about it, and at this point, I don't know how I am going vote on it, but I am a little skeptical of the amendment being a help to deter drunk driving in the state, and more so it may help the individual who is a habitual drunk and can use this as a defense in the court of law. I am worried about it.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. SHAYS: (147th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Christopher Shays.

REP. SHAYS: (147th)

Thank you, Mr. Speaker, and members of this House. If this amendment should pass, it should pass because it provides both a protection to the defendant and a protection to the state. It makes sure that the test results are more precise and it gives a better idea to the court, and so I would encourage both those who do not like this bill, and those who like the bill, to vote

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for the amendment, and then let's debate the issue of per se after this amendment passes.

SPEAKER VAN NORSTRAND:

Will you remark further? Rep. Robert Ward.

REP. WARD: (86th)

Mr. Speaker, through you, if I may a question to the proponent of the amendment.

SPEAKER VAN NORSTRAND:

Please proceed.

REP. WARD: (86th)

Rep. Blumenthal, through the Chair, because I am trying to read through this quickly to be sure that I understand. If an individual is say .12 on the first test and .07 on the second test, can he still be prosecuted under Subdivision 2 per se or could he only be prosecuted under the Subdivision 1, driving under the influence?

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Very definitely, he could be prosecuted under the

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second type of, that is A2, the second type of proof as well as the first. Normally, by way of further response, a person's blood alcohol level drops as the rate of about .02 per half hour. So the drop will not be as dramatic as the one that you suggested in your hypothetical, but as long as the analysis of both tests would establish blood alcohol content above .1 at the time the person was driving, the second method of proof can be used, that is the per se method.

SPEAKER VAN NORSTRAND:

Rep. Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. Initially, I felt that this amendment makes sense because to be sure that the test is accurate. However, if one still can be prosecuted for per se simply based on the first test and the point of per se is no other evidence goes in, per se goes in, you are in fact violating the statute, and no other evidence need be shown under per se and I have no problem with per se, but I don't understand the purpose of a second test, if you can still be found to be per se in violation of the statute, even though a test given a half hour later says that you are less than .10, and I

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guess I put a question mark at the end of that if Rep. Blumenthal can respond to my concerns.

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. WARD: (86th)

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Ward, was your intention to ask a question or not?

REP. WARD: (86th)

Yes, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Yes, thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Again, we have a long day to go, excuse me, Rep. Blumenthal. It would be helpful if you do direct your questions through the Chair. The rules provide because the object of your question is not going to know, unless you in fact have asked one. Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Thank you, Mr. Speaker. As I can understand the

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question, the label per se as used to describe this method of proof says basically if someone's blood alcohol content is above .1 at the time the person was driving, and that is the time of the offense, not when the test was taken, but at the time the person was driving, then that person has violated the law. That is what we would be saying as a legislature if we passed this bill.

The amendment says that the police have to make reasonable efforts, and it is only reasonable efforts, to do a second test, and the reason for the second test is to assure that the analysis show blood alcohol content at the time the person was driving. That earlier point in time.

In the hypothetical you posed, the prosecution would have a very strong case, an overpowering case, because the trend would show a drop between the first and second test, and relating back to the time the person was driving, the prosecution clearly would be able to establish a per se violation. So there are two objectives to this part of the amendment, not only to insure a second test for the sake or reliability as to the results of the first test, but also to be able to establish as precisely as possible what the blood alcohol

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content was at the time the person was driving. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Will you remark further? Rep. Carpenter.

REP. CARPENTER: (76th)

Mr. Speaker, through you, a question to the proponent.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

REP. CARPENTER: (76th)

Not being a lawyer, if a person is in a car accident and a test is given to them, and they fail the test, obviously under your amendment, they would have another shot. Through you, sir.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Under this amendment, there would have to be reasonable efforts to give a second test to that person, that is correct. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Carpenter.

REP. CARPENTER: (76th)

And the last question, sir, through you. If the

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person who is in the accident passes out during the interim between the first test and the second test, then what would happen, through you, sir.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Assuming for that reason, --

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. BLUMENTHAL: (145th)

I'm sorry, Mr. Speaker. Through you, assuming that for that reason it would be impossible to give a second test, the first test would be admissible. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Carpenter.

REP. CARPENTER: (76th)

I still have some questions, problems with the amendment, thank you, sir.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. FRANKEL: (121st)

Mr. Speaker.

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SPEAKER VAN NORSTRAND:

Rep. Robert Frankel.

REP. FRANKEL: (121st)

Mr. Speaker, through you, a question of the proponent of the amendment. As I understand the hypothetical of Rep. Migliaro, he ask the question about someone who was 1.5 at the time of the first test and who then was .9 later. And my question is, is it possible that the second test will be a higher level than the first? It seems to be a presumption or an expectation in the Chamber that the second test will always be lower. Is it possible for the second test to show a higher blood level, and if so, why? Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal, care to respond.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. It is possible and it has happened in the experience of those who have enforced the law that we have now on the books that the second level sometimes is in fact higher than the first. The reason is that if the person has taken in alcohol very very shortly before the first test is given, and it is reaching the blood stream in increasing levels during the

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first and second test. The results of the second test may indeed be higher.

For example, if for some reason the person, to take a hypothetical, swallows a half a bottle of whiskey just before the police pull him over to the side of the road, his blood alcohol content will increase at the time the second test as compared to the first. That is a very, very rare occasion in the experience of law enforcement authorities. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Frankel.

REP. FRANKEL: (121st)

Thank you very much.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. JAHN: (32nd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Robert Jahn.

REP. JAHN: (32nd)

Mr. Speaker, the question is for the proponent of this amendment.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

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REP. JAHN: (32nd)

As indicated in your amendment, you were speaking, through you, Mr. Speaker, your are speaking of chemical analysis. Would you clarify that for me? Are we talking about a breatholizer test at this time, or could this also include the blood test or urine test, which would be taken at a much later time in the span of events?

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. The test contemplated by this amendment are the very same tests that would be contemplated by the bill itself. It could be a urine or blood or breatholizer test. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Jahn.

REP. JAHN: (32nd)

Thank you, Mr. Speaker. One more question, your are indicating that you want to have two tests made so that you can extrapolate this type of information. Is there scientific information that under all types of circumstances that indicates this is a straight line extrapolation?

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SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. I'm not sure I understood that question. Perhaps it could be restated. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Jahn, could you rephrase the question.

REP. JAHN: (32nd)

I will try, Mr. Speaker. Through you, you are indicating that you want two tests, Rep. Blumenthal, one 30 minutes after the other, or approximately of that time span. My question is does the situation arise no matter what the circumstances that you can take those two points and extrapolate fact in either forward or backwards to indicate what the alcohol level is in the blood? Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

I am informed by the State's Chief Toxicologist, Dr. Stoleman, and by the Chief State's Attorneys Office both of whom by the way have been involved in the

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drafting of this amendment, that it is possible to relate back to extrapolate back in this way.

In fact, an expert testifying in court would very much prefer to have a second test because it would eliminate the need for other evidence by which he would testify as to what the blood alcohol level was at an earlier point in time.

Without the second test, he is compelled to rely on, for example, testimony as to how many drinks the person had over what period of time, all kinds of extraneous and sometimes difficult to establish evidence that would be necessary for him to make the same kind of analysis. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Jahn.

REP. JAHN: (32nd)

Again, through you, Mr. Speaker, you could only extrapolate this data back for a certain period of time, especially if you had done a blood test or a urine test, it would seem to me that the period of time that would have passed in which the individual would not have had any alcohol intake that you could not extrapolate your two points of information back much before a certain

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period of time, because to do so, you could extrapolate back to infinity.

What you are really saying then is he doesn't have any blood at all. It is all alcohol, and I just can't believe that. Again, my question, through you, Mr. Speaker, to the Representative is how far back timewise is it permissible to extrapolate this information?

SPEAKER VAN NORSTRAND:

Rep. Blumenthal, do you care to respond.

REP. BLUMENTAL: (145th)

Yes, through you, Mr. Speaker. It varies according to the test. The breatholizer, for example, after a period of 3 or 4 hours the tests becomes relatively meaningless. That is why the amendment states that reasonable efforts have to be made within a reasonable amount of time. If it is impossible within that period of time to do a second test either because as has been suggested earlier, the person becomes incapacitated, or refuses or any other reason, the first test on its own is admissible, and it would be established as to what the blood alcohol content was at the time the person was driving through the kind of testimony we have in ordinary cases right now.

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This is an amendment that would be supported by a responsible prosecutor, indeed is supported by the Chief State's Attorneys Office because it assures a reliable method of proof, and if the police at present are able to do so, I am confident they would in most instances attempt to do a second test simply because it is the surest way of getting a conviction.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. FARR: (19th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Robert Farr.

REP. FARR: (19th)

Thank you, Mr. Speaker. Very briefly, just so we don't get lost in the details here, in 99% of the cases, we are not dealing with close cases. We are not dealing with close calls. The average blood alcohol content of an individual arrested today for drunk driving is at .19, .19. I don't care if you do tests for the next 4 hours. He is still going to be far over the .10.

In a few cases, you may have somebody who gets arrested at close to the margin, but that is really the

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exception, and not the rule, and what per se is designed to deal with are those individuals today that get arrested, having had 13 drinks, are measured at .19, and say that they can handle their alcohol, and therefore, they want a trial on whether they are under the influence or not, and that's what the bill is designed to do.

This simply gives greater safeguards and greater protections. The only problem I have with the amendment, it does put an additional burden on the police officers, and I am sure they would rather only do one test, but frankly, if this assures somebody's fear that somehow you are going to be improperly convicted under per se when you weren't under the influence, I think this amendment will strengthen the bill.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. FUSCO: (81st)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Angelo Fusco.

REP. FUSCO: (81st)

Mr. Speaker, I rise in support of the amendment. I think that the statements that have been presented here

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would allow us to understand that this amendment would enact a credible test that could be graphed, and it would protect not only the victims of this unfortunate type of action, but the defendant too, and those people that abuse and are .19, or over .20 ought to be punished to the full extent of the law if they are abusing a privilege such as this.

Again, I support the amendment, and I urge my colleagues to do so.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. WENC: (60th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. David Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. A question through you to Rep. Blumenthal.

SPEAKER VAN NORSTRAND:

Please state your question, sir.

REP. WENC: (60th)

Yes, Rep. Blumenthal, I see in your amendment its lines 39 through 43 of your amendment you eliminate

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lines, I guess subsection 7 of the file copy, lines 80 through 85.

If the state proceeded under the traditional driving while intoxicated portion of the file copy, would the elimination of this language, would they still be required to show additional competent evidence of being under the influence?

SPEAKER VAN NORSTRAND:

Rep. Blumenthal, would you care to respond?

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. The reason for the elimination of Subsections C7 of the file copy is simply that where there is a per se test, or method of proof, there is no need for what is called in the file copy additional competent evidence because the evidence that would establish the offense, that is having the blood alcohol content above a certain level is the analysis that is done on the basis of the test that are given.

The reliability of the mechanism of testing the machinery would be required to be established under subsection C, but additional competent evidence relating to behavior or amount of drinking and so forth, would not be required. Through you, Mr. Speaker.

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SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Thank you. Another question, through you, Mr. Speaker, to Rep. Blumenthal. Rep. Blumenthal, it is my understanding that this amendment compels the state to proceed under either the per se portion or the traditional driving while intoxicated portion of the file copy.

If the state elects to proceed under a per se portion of this file copy, and does not get a conviction on the grounds that, let's say, the machine or the test results are not reliable, would they then be able to proceed against the defendant under the traditional offense of driving while intoxicated?

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. My understanding, if I understand that hypothetically, is that a second prosecution on the basis of the same set of facts would violate that person's constitutional rights against being put twice in jeopardy for the same potential offense.

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SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Yes, just one more question. Rep. Blumenthal, through the Speaker, that's if we all agree that the per se legislation is only another way to prove driving while intoxicated, and you indicated in your opening statement on the amendment, that we are only dealing with one crime, that is driving while intoxicated, driving while under the influence.

The per se is just another way to prove the crime, but I did hear Rep. Farr earlier on in the debate indicate that what we are doing here, I think I heard him say, that we are finding a new crime, that is that it is illegal to drive with a particular blood alcohol content, and I suppose my question now is not to Rep. Blumenthal, but perhaps directed to Rep. Farr.

Now, Rep. Farr, could you please once again state for me your understanding of what we are doing here. Are we creating a new crime, that is driving with a particular blood alcohol content or are we just creating another way to prove driving while under the influence.

SPEAKER VAN NORSTRAND:

Rep. Farr, do you know what we are doing here?

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REP. FARR: (19th)

Through you, Mr. Speaker, to Rep. Wenc. I am not sure we are dealing with more than a semantic difference. My understanding is that we are defining in the statute under the definition of driving under the influence, we are making a definition now of making it an offense of driving above .10.

Now, you can say it is either a new definition for the present crime of driving under the influence or you can say that that is a new offense of driving above .10. It is contained in the same statute. I'm not sure where the distinction is. The intent is clear that you are now creating in effect a new offense by saying that it is against the law to drive with alcohol in your blood above a certain level. This in itself becomes the offense.

Now that is part of the existing statutes, but in itself it becomes an offense.

SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. With that sort of answer, I become a bit leary that what we are talking about here now are two different crimes, and if the state

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proceeds under the per se portion and fails under a prosecution there, I'm not so sure now whether or not they would be prevented from pursuing the defendant under the traditional driving while under the influence portion, the second crime, and perhaps a question through you back to Rep. Blumenthal.

Rep. Blumenthal, my understanding is that you feel that the constitutional right against double jeopardy would prevent the state from prosecuting an individual under the traditional driving while intoxicated portion of this statute should they fail to get a conviction under the per se portion of this statute.

Would you please elaborate?

REP. BLUMENTHAN: (145th)

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Yes, that is correct, Rep. Wenc. Very clearly, under the law that surrounds the double jeopardy, the United States Constitution whether we regard this law as establishing one offense or two offenses, a person cannot be put twice in jeopardy for the same set of actions.

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In other words, whether you viewed it as a bill that establishes two methods of proof, which is the case in my view with this statute. I think that is clearly the way it is framed. It follows other states that have passed this type of law, or if you view it as two separate offenses which in my view would be correct, but nonetheless, the distinction is of no consequence to the question you've raised, because a person could not be prosecuted twice for the same set of acts, regardless of whether this is viewed as one offense or two.

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. CUNNINGHAM: (148th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Richard Cunningham.

REP. CUNNINGHAM: (148th)

Thank you, Mr. Speaker. Mr. Speaker, through you, of Rep. Blumenthal, if I may. I'd like to inquire as to why if you have a blood test of over .1 a prosecutor would elect to go under the first section instead of the second section.

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SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. In all likelihood, he would not. It would be a very, very rare instance that he would. I can't tell you what reasons there might be except that for example, Mr. Speaker, through you, if for example there were some question about the reliability of the machine, the particular machine or the test given on the day of the actual performance of the analysis. If the test were somehow challengeable under subsection C, then a prosecutor might elect to go under the first prong of the law.

SPEAKER VAN NORSTRAND:

Rep. Cunningham.

REP. CUNNINGHAM: (148th)

Yes, Mr. Speaker, further through you, if in fact that were the case and there was some minor problem with the machine, what would happen if the prosecutor didn't know that until you were into the trial, and the testimony was on the stand, and you had your policeman available to testify that he was weaving and everything else, and that .20 but you couldn't proceed under that

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and you had already elected.

Then you would be completely out of the case, wouldn't you, Mr. Blumenthal?

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Through you, Mr. Speaker. The admissibility of the test is the trigger point for the decision. The person would be charged with driving while under the influence. If the prosecutor knew in advance that there was going to be a problem with admissibility, which an competent prosecutor should, he would go under the first test.

If he found that there was a problem down the line, if there were surprises at the trial, he could still under some circumstances shift gears and go under the first type of proof. Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Cunningham.

REP. CUNNINGHAM: (148th)

Mr. Speaker, I'm not so sure that that would be simply the case. I do find objection as I think other speakers have with that portion of the amendment.

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Either it should be admissible or not be admissible, and to require that the determination of whether it is under one section or the other, I find utterly unnecessary, and if anything, not useful.

On that basis, I'm not going to support the amendment. Thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Will you remark further on the adoption of House "A"?

If not, will staff and guests please come to the well of the House. The machine will be opened. The Clerk please announce the pendency of a roll call.

The question is on adoption of House "A".

CLERK:

The House of Representatives is now voting by roll. All members please return to the Chamber immediately. The House of Representatives is voting by roll. All members please return to the Chamber immediately.

SPEAKER VAN NORSTRAND:

I would ask the members after voting to remain in the Chamber momentarily.

Have all the members voted and are your votes properly recorded? Have all the members voted? Are your

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votes properly recorded? If so, the machine will be locked and the Clerk will please take a tally.

While the Clerk is assembling the tally, and while the members are in the Chamber, I will repeat the announcement made one hour ago when there was an absence of members in the Chamber.

There are 11 items of the Go List. Frequently, members have family and community obligations on a Saturday, and I understand that. The Majority Leader understands that, and we are respectful of it. We have started on time. When we will finish is up to you because we will be gone when the 11 items are gone.

It has taken us now one hour to get part way through item 1 of 11. I think you can get the picture. If there are long questions, long debate, I would suggest to some of the members in fairness to the remaining members, you might go speak to a proponent whose name is on an amendment and ask your questions, without entailed debate.

Most of the items as I look on the adgenda are ones where emotional responses have pretty well guided people as to where they are going. I don't think we are going to change a lot of minds during the hourse we

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commit today.

The Clerk please announce the tally.

CLERK:

House Bill 5429, House Amendment "A"

Total number voting 143

Necessary for passage 72

Those voting yea 138

Those voting nay 5

Those absent and not voting 8

SPEAKER VAN NORSTRAND:

House "A" is adopted.

House Amendment Schedule "A"

In line 1, before "Section" insert "Section 1."

In line 39, bracket the word "In" and after the closing bracket insert the following: "EXCEPT AS PROVIDED IN SUBSECTION (d) OF THIS SECTION, IN"

In line 53, after the word "performed" insert the following: "BY OF AT THE DIRECTION OF A POLICE OFFICER"

In line 67, insert an opening bracket after "(5)"

In line 77, insert a closing bracket after the semicolon and after said closing bracket insert the following: "AN ADDITIONAL CHEMICAL TEST OF THE SAME TYPE WAS PERFORMED AT LEAST THIRTY MINUTES AFTER THE INITIAL TEST WAS PERFORMED, PROVIDED HOWEVER THE RESULTS OF THE

INITIAL TEST SHALL NOT BE MADE ADMISSIBLE UNDER THIS SUBSECTION IF REASONABLE EFFORTS WERE MADE TO HAVE SUCH ADDITIONAL TEST PERFORMED IN ACCORDANCE WITH CONDITIONS SET FORTH IN THIS SUBSECTION AND SUCH ADDITIONAL TEST WAS NOT PERFORMED OR WAS NOT PERFORMED WITHIN A REASONABLE TIME, OR THE RESULTS OF SUCH ADDITIONAL TEST ARE NOT ADMISSIBLE FOR FAILURE TO MEET A CONDITION SET FORTH IN THIS SUBSECTION; AND"

In line 78, after "results" insert "AND THE ANALYSIS THEREOF"

In line 80, insert a period and an opening bracket after the word "offense"

In line 81, delete "subdivision (1) OF"

In line 85, insert a closing bracket after the period

In line 86, insert an opening bracket after "(d)"

In line 104, delete ". ["

In line 115, after the closing bracket insert the following: "IN ANY PROSECUTION FOR A VIOLATION OF SUBDIVISION (1) OF SUBSECTION (a) OF THIS SECTION, RELIABLE EVIDENCE RESPECTING THE AMOUNT OF ALCOHOL OR DRUGS IN THE DEFENDANT'S BLOOD OR URINE AT THE TIME OF THE ALLEGED OFFENSE, AS SHOWN BY A CHEMICAL ANALYSIS OF THE DEFENDANT'S BLOOD, BREATH OR URINE, OTHERWISE ADMISSABLE ONLY AT THE REQUEST OF THE DEFENDANT."

After line 234, add section 2 as follows:

"sec. 2. Section 14-227b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any person who operates a motor vehicle in the state shall be deemed to have given his consent to a chemical analysis of his blood, breath or urine and, if said person is a minor, his parent or parents or guardian shall also be deemed to have given his 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 or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor, and thereafter, after being apprised of his constitutional rights, having been requested to submit to a blood, breath or urine test at the option of the police officer and having been informed that his license or nonresident operating privilege will be suspended in accordance with the provisions of subsection (d), (e) or (f) of this section if he refuses to submit to such test and that evidence of such refusal shall be admissible in accordance with subsection (f) of section 14-227a and may be used against him 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 he informed the person that his license or nonresident operating privilege would be suspended if he refused to submit to such test.

(c) If the person arrested refuses to submit to such test or analysis, the police officer shall immediately revoke the motor vehicle operator license or nonresident operation privileges of such person for a twenty-four hour period and prepare a written report of such a refusal. Such written report shall be endorsed by a third person who witnessed such a refusal. The report shall be made on a form approved by the commissioner of motor vehicle and shall be sworn under penalty of false statement as provided in section 53a-157 by the police officer before such refusal was made. 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 under the influence of intoxicating liquor or any drug or both or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor, and shall state that such person had refused to submit to such test or analysis when requested by such police officer to do so.

(d) Upon receipt of such report of a first refusal, the commissioner of motor vehicle shall suspend any license or nonresident operating privilege of such person for a period of six months. Any person whose license or operating privilege has been suspended in accordance with this subsection shall automatically be entitled to an immediate hearing before the commissioner. 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 drug or both or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis; and (4) was such person operating a motor vehicle. 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.

(e) If a police officer revokes a person's operator's license or nonresident operating privilege for twenty-four hours pursuant to subsection (c), such officer shall (1) keep a written record of the revocation of a license, including the name and address of the person and the date and time of the revocation; (2) provide the person with a written statement of the time from which the revocation takes effect, the duration of the revocation, the location where the license may be recovered upon termination of the revocation and acknowledging receipts of the revoked license; and (3) provide the department of motor vehicle with a copy of the notice of revocation of the license of such person, the name and address of such person and the date and time of revocation.

(f) Upon receipt of a report of a refusal by a person (1) whose motor vehicle operator's license or nonresident operating privilege has previously been suspended for a refusal. (2) who has previously been found guilty under subsection (a) of section 14-227a or (3) who has previously participated in the pretrial alcohol educating system under section 54-56g, the commissioner of motor vehicle shall immediately schedule

a hearing concerning the suspension of any license or nonresident operating privilege of such person. 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 drug or both or while his ability to operate such motor vehicle is impaired by the by the consumption of intoxicating liquor; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis; and (4) was such person operating the motor vehicle. Unless, after such hearing, the commissioner finds on any one of the said issues in the negative, the commissioner shall suspend such license or operating privilege of such person for a period of one year for such refusal to submit to such a test and for a period or three years for any such subsequent refusal.

(g) THE PROVISIONS OF THIS SECTION SHALL APPLY WITH THE SAME EFFECT TO THE REFUSAL BY ANY PERSON TO SUBMIT TO AN ADDITIONAL CHEMCIAL TEST AS PROVIDED IN SUBDIVISION (5) OF SUBSECTION (c) OF SECTION 14-227a AS AMENDED BY SECTION 1 OF THIS ACT.

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

[(h)] (i) The state shall pay a reasonable charge of any physicaian who, at the request of a municipal police department, takes blood sample for purposes of test under the provisions if this section."

SPEAKER VAN NORSTRAND:

Will you remark further on the bill.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Tulisano.

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REP. TULISANO: (29th)

Mr. Speaker, the Clerk has an amendment, LCO 7120.

SPEAKER VAN NORSTRAND:

Will the Clerk please call LCO No. 7120,
designated House Amendment Schedule "B".

REP. TULISANO: (29th)

Permission to summarize, Mr. Speaker.

CLERK:

House Amendment Schedule "B", LCO 7120, offered by
Rep. Tulisano.

SPEAKER VAN NORSTRAND:

The gentleman has sought permission to summarize.
Is there objection? If not, please proceed, sir.

SPEAKER VAN NORSTRAND:

Mr. Speaker, this lengthy amendment has one
provision which maybe controversial, that requires giving
an accused an opportunity to call a lawyer if they want
to before the test is performed. I think that is
consistent with most laws around the nation as well as in
line with the court decisions are coming down.

The rest of the bill I think makes the file copy
should this ever become law, a law that will be
worthwhile having on the books. The file copy with

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regard to per se law is limited to setting up two standards by which one might be convicted.

However, it does not address the issues of second offenders. It does not address the issue of whether or not one can be let into the alcohol rehabilitation program because this is a new offense. It doesn't address any of those issues which would be a field day for somebody to play which will be passed with this House amendment.

Mr. Speaker, I think this really straightens out our law with regard with how we treat individuals who are arrested and convicted of this per se law. I would move for its adoption.

DEPUTY SPEAKER BELDEN:

The gentleman has moved adoption of House "B".

Will you remark further?

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Tulisano.

REP. TULISANO: (29th)

As I indicated, I think it's absolutely necessary, if this bill becomes law, this is part of it. I would

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move its adoption, and hope we pass it on.

DEPUTY SPEAKER BELDEN:

Will you remark further? Rep. Farr.

REP. FARR: (19th)

Mr. Speaker, very briefly, I think I can live with this amendment. I would urge passage of the amendment.

DEPUTY SPEAKER BELDEN:

Will you remark further? If not, I will try your minds. All those in favor of adoption of House "B", please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BELDEN:

All opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER BELDEN:

I will try your minds again. All those in favor of adoption of House "B", please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BELDEN:

All opposed, nay.

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REPRESENTATIVES:

No.

DEPUTY SPEAKER BELDEN:

The ayes have it. House "B" is adopted.

House Amendment Schedule "B".

In line 1, before "Section" insert "Section 1."

In line 46, after the word "defendant" insert the following:

"WAS AFFORDED A REASONABLE OPPORTUNITY TO TELEPHONE AN ATTORNEY PRIOR TO THE PERFORMANCE OF THE TEST AND"

In line 148, insert an opening bracket before the word "the" and a closing bracket after the word "provisions" and insert in lieu thereof the words "ANY PROVISION"

In line 180, after the word "of" insert the words "SUBSECTION (a) OF"

In line 182, after the comma insert the following:
"AND A CONVICTION UNDER THE PROVISIONS OF EITHER SUBDIVISION (1) OR (2) OF SUBSECTION (a) OF THIS SECTION"

After line 234, add sections 2 and 3 as follows:

"Sec. 2. Section 14-227b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any person who operates a motor vehicle in this state shall be deemed to have given his consent to a chemical analysis of his blood, breath or urine aid, if said person is a minor, his parent or parents or guardian shall also be deemed to have given his 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 or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor, and thereafter, after being apprised of his 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 his license or nonresident operating privilege will be suspended in accordance with the provisions of subsection (d), (e) or (f) of this section if he 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 he informed the person that his license or nonresident operating privilege would be suspended if he refused to submit to such test.

(c) If the person arrested refuses to submit to such test or analysis, the police officer shall immediately revoke the motor vehicle operator's license or nonresident operating privilege of such person for a twenty-four hour period and prepare a written report of such refusal. Such written report shall be endorsed by a third person who witnessed such refusal. The report shall be made on a form approved by the commissioner of motor vehicles and shall be sworn to under penalty of false statement as provided in section 53a-157 by the police officer before whom such refusal was made. 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 or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor, and shall state that such person had refused to submit to such test or analysis when requested by such police officer to do so.

(d) Upon receipt of such report of a first refusal, the commissioner of motor vehicles shall suspend any license or nonresident operating privilege

of such person for a period of six months. Any person whose license or operating privilege has been suspended in accordance with this subsection shall automatically be entitled to an immediate hearing before the commissioner. 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 drug or both or while his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis; and (4) was such person operating the motor vehicle. If, after such hearing, the commissioner finds of any one of the said issues in the negative, the commissioner shall reinstate such license or operating privilege.

(e) If a police officer revokes a person's operator's license or nonresident operating privilege for twenty-four hours pursuant to subsection (c), such officer shall (1) keep a written record of the revocation of a license, including the name and address of the person with a written statement of time from which the revocation takes effect, the duration of the revocation, the location where the license may be recovered upon termination of the revocation and acknowledging receipt of the revoked license; and (3) provide the department of motor vehicles with a copy of the notice of revocation of the license of such person, the name and address of such person and the date and time of revocation.

(f) Upon receipt of a report of a refusal by a person (1) whose motor vehicle operator's license or nonresident operating privilege has previously been suspended for a refusal, (2) who has previously been found guilty under subsection (a) of section 14-227a or (3) who has previously participated in the pretrial alcohol education system under section 54-56g, the commissioner of motor vehicles shall immediately schedule a hearing concerning the suspension of any license or nonresident operating privilege 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 drug or both or while

his ability to operate such motor vehicle is impaired by the consumption of intoxicating liquor; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis; and (4) was such person operating the motor vehicle. Unless, after such hearing, the commissioner finds on any one of the said issues in the negative, the commissioner shall suspend such license or operating privilege of such person for a period of one year for such refusal to submit to such test and for a period of three years for any such subsequent refusal.

(g) 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.

(h) 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.

Sec. 3. Section 54-56g of the general statutes is repealed and the following is substituted in lieu thereof:

(a) There shall be a pretrial alcohol education system for persons charged with a violation of section 14-227a. Upon application by any such person for participation in such system, the court shall, but only as to the public, order such information or complaint to be filed as a sealed information or complaint, provided such person states under oath in open court under penalties of perjury that he has never had such system invoked in his behalf and that he has not been convicted of a violation of SUBSECTION (a) OF section 14-227a before or after October 1, 1981 OR A VIOLATION OF SUBDIVISION (1) OR (2) OF SUBSECTION (a) OF SECTION 14-227a ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

(b) The court, after consideration of the recommendation of the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case, may in its discretion, grant such application. If the court grants such application, it shall refer such person to the office of adult probation

for assessment and recommendations with respect to placement in a program of alcohol education and treatment. Upon completion of the evaluation, the court shall determine whether such person is eligible for the pretrial alcohol education system. If the court determines that the defendant is eligible, the defendant shall be referred to the office of adult probation for placement in the system for one year. Any person who enters the system shall agree: (1) To the tolling of the statute of limitations with respect to such crime, (2) to a waiver of his right to a speedy trial, (3) to participate in at least eight meetings or counseling sessions in a program of alcohol education and treatment pursuant to this section and (4) to accept more intensive treatment or other forms of education or treatment or to participate in additional meetings or counseling sessions if the office of adult probation deems it appropriate. The suspension of the motor vehicle operator's license of any such person pursuant to section 14-227b shall be effective during the period such person is participating in such program. If the court determines the defendant ineligible for the system or if the program provider certifies to the court that the defendant did not successfully complete the program of alcohol education or treatment to which he was assigned or is no longer amenable to treatment under such program, the court shall order the information or complaint to be unsealed, enter a plea of not guilty for such defendant and immediately place the case on the trial list. If such defendant satisfactorily completes the program of alcohol education or treatment to which he was assigned, he may apply for dismissal of the charges against him and the court, or reviewing the record of probation and on finding such satisfactory completion, shall dismiss the charges. A record of participation in such program shall be retained by the office of adult probation for a period of seven years from the date of application. The office of adult probation shall transmit to the department of motor vehicles a record of participation in such program for each person who satisfactorily completes such program. The department of motor vehicles shall maintain for a period of seven years the record of a person's participation in such program as part of such person's driving record.

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(c) A fess of two hundred fifty dollars shall be paid to the court by any person who participates in the pretrial alcohol education system, except that no person may be excluded from such program of inability to pay such fee, provided (1) such person files with the court an affidavit of indigency or inability to pay, (2) such indigency is confirmed by the office of adult probation, and (3) the court enters a finding thereof. All such fees shall be credited to the general fund.

(d) The Connecticut alcohol and drug abuse commission shall contract with service providers, develop standards and oversee adequate programs of alcohol education and treatment to meet the requirements of this section. Said commission shall adopt regulations in accordance with chapter 54 to establish standards for such alcohol education and treatment programs.

(e) Any balance remaining in the alcohol education and treatment fund on July 1, 1983, shall be transferred to the general fund."

DEPUTY SPEAKER BELDEN:

Will you remark further on the bill as amended?

REP. WENC: (60th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Mr. Speaker, yes, thank you, Mr. Speaker. The Clerk has LCO No. 8026. Would the Clerk please call the amendment, and may I be allowed to summarize?

DEPUTY SPEAKER BELDEN:

The Clerk please call LCO 8026 which will be

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designated House Amendment Schedule "C".

CLERK:

House Amendment Schedule "C", LCO No. 8026,
offered by Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. What this amendment does is it says that if the defendant is an indigent or otherwise unable to pay for an expert chemical witness, then the state would provide one for him.

DEPUTY SPEAKER BELDEN:

The gentleman has moved adoption of House "C".
Will you remark further, sir?

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. I think that there is two reasons why I've put this amendment before the Chamber today. First of all, I think with the adoption of Rep. Blumenthal's amendment there now may be the possibility of two tests being taken.

Secondly, the case law that has developed with respect to per se statutes in other state indicate that the test results may very well be scientifically inaccurate and should the state proceed under the per se portion of the file copy, then the only adequate defense

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that an accused has is to challenge the test results. Without the opportunity to challenge the test results in a realistic manner, I think what this legislation would do is to subject to the defendant to conviction by machine, despite the fact that results do not necessarily indicate the true blood alcohol content.

The legislation, I think, without the amendment would allow a finding of guilty beyond a reasonable doubt on the basis of test results which may not be entirely accurate. It is going to be expensive enough these days for a defendant to hire an attorney to represent his interests in a prosecution of driving while intoxicated especially in the per se portion of the statute.

It becomes crystal clear that in order to have an adequate defense an attorney in addition to a chemical expert will be necessary, and all my amendment says is that if the defendant is found to be indigent or if he is otherwise unable to pay, and that finding would be made by the court, then the state would appoint a chemical expert to assist the defendant in his defense.

I fear that if we do not pass this statute, the only individuals who will be able to defend themselves from a prosecution of per se are the accused who are

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financially able to, the wealthy, and the rich, to hire the legal counsel they need and all the experts in order to defend themselves from a prosecution based on accusation by a machine.

Thank you, Mr. Speaker.

REP. FARR: (19th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Farr.

REP. FARR: (19th)

Mr. Speaker, briefly, I would strongly urge this House to reject this amendment. This is sheer nonsense. What is says is you are going to defend yourself with an expert. I thought that defendants used attorneys. We have a system of defense. We have already a system of public defenders that assist people who are threatened with incarceration.

Now it is true that you may not get a public defender in some cases if you are not threatened with incarceration, but it seems to me to have a law that says that anytime you get arrested for drunk driving, you automatically get an expert to come in is just an absurdity. I would strongly urge you reject this

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amendment.

DEPUTY SPEAKER BELDEN:

Will you remark further, Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, a question through you to Rep. Wenc.

DEPUTY SPEAKER BELDEN:

Please state your question, sir.

REP. KRAWIECKI: (78th)

Rep. Wenc, I haven't seen a fiscal note. I am wondering if you have one available.

DEPUTY SPEAKER BELDEN:

Rep. Wenc, would you are to respond.

REP. WENC: (60th)

Yes, through you, Mr. Speaker, I do, and I believe I did pass them out to the appropriate staff members. I could read these fiscal notes to you if you don't have a copy of it, Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Would he please?

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REP. WENC: (60th)

Yes.

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Yes, Mr. Speaker. It says down at the bottom of the explanation of estimates, "adoption of this amendment could result in additional costs. It is unclear if the cost of the expert witness would be paid by the Judicial Department or the Public Defender. Under current statutes, if an indigent person is represented by a Public Defender and an expert witness is needed, one is provided. To this extent, this amendment clarifies an existing practice and would not result in any additional costs."

REP. KRAWIECKI: (78th)

Thank you.

DEPUTY SPEAKER BELDEN:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Rep. Wenc.

REP. BASSING: (105th)

Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

Rep. Bassing.

REP. BASSING: (105th)

I rise to oppose this amendment. It appears to be quite simply --

DEPUTY SPEAKER BELDEN:

Excuse me, excuse me, Rep. Krawiecki, I apologize if you are not completed with your comments. Naturally, I am just --

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker, I know we are trying to move business as quickly as we can.

I rise in opposition to this --

DEPUTY SPEAKER BELDEN:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I rise in opposition to the amendment. I think frankly it is extra wrapping in an attempt to, in a veiled manner, to do damage to a bill that I think we ought to vote on as quickly as possible, and I really do believe that it is not adding anything specific that would not already be offered as the fiscal note represents.

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DEPUTY SPEAKER BELDEN:

Does anybody else have anything additional to add to the debate so far?

REP. BASSING: (105th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Bassing.

REP. BASSING: (105th)

Mr. Speaker, I rise to oppose this amendment. It appears to be quite simply that if a person is able to afford to drink, he is able to afford a car, then he ought to be able to afford a lawyer, so I rise to object to this amendment.

REP. WOLLENBERG: (21st)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, just to make perfectly clear for the Chamber, now in that we have passed the possibility of a jail sentence for drunk driving, anyone who cannot afford an attorney is entitled to a public defender.

So just to make it clear. I think Rep. Farr knew

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that but he just stated it a little bit differently. So I can't figure that cost, but somebody will probably at the end of the year.

DEPUTY SPEAKER BELDEN:

Will you remark further?

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Mr. Speaker, just to clarify the point that was just made by Rep. Wollenberg. This amendment has nothing to do with free legal representation which is provided only in the event that the person is able to establish that he is too poor to afford a lawyer himself.

I think that the same principal ought to be applied in this instance where we are considering whether or not an expert should be hired on his behalf. I understand the purpose of the amendment. I have great respect for it because in this instance expert testimony will be very important, but I think that the principal ought to be applied even handedly that indigency ought to have to be established in order for any assistance of this kind whether expert testimony or legal representation to be provided, and so for that reason, Mr. Speaker, I would oppose the amendment.

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DEPUTY SPEAKER BELDEN:

Thank you, sir.

Are you ready to vote?

REP. WENC: (60th)

Yes, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Just briefly, there appears to be quite a misunderstanding as to what this amendment says. It does limit availability, first of all, to indigency and second to those otherwise unable to pay.

That showing has to be made before the judge. If the judge finds he is able to pay for an expert witness to assist in his defense, the state would not have to provide it.

I think we are moving down a very dangerous road when we prosecute and obtain convictions by machine. The test results have to be challenged in order to defend the accused. Without the assistance of an expert, I submit that the perils of this legislation are much more substantial than Rep. Farr would have you believe.

Because an accused who cannot afford an expert is

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denied an expert, I submit it is tantamount to a denial of a jury trial, and it is going to be an automatic conviction of that individual by a machine. I urge that you support this amendment.

DEPUTY SPEAKER BELDEN:

My personal view would be that any further comment would probably be repetitive. Will you remark further?

If not, I will try your minds. All those in favor of adoption of House "C" please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BELDEN:

All those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER BELDEN:

The nays have it. House "C" fails.

House Amendment Schedule "C"

After line 129, insert a new subsection (f) as follows:

"(f) IN THE CASE OF A PROSECUTION UNDER SUBDIVISION (2) OF SUBSECTION (a) OF THIS SECTION, IF THE DEFENDANT IS INDIGENT OR OTHERWISE UNABLE TO PAY FOR AN EXPERT WITNESS WHO HAS SPECIALIZED KNOWLEDGE WITH RESPECT TO THE PERFORMANCE, ACCURACY, RELIABILITY AND

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INTERPRETATION OF CHEMICAL TESTS OF A PERSON'S BREATH, BLOOD OR URINE, THE COURT SHALL APPOINT SUCH AN EXPERT WITNESS TO ASSIST THE DEFENDANT IN HIS DEFENSE AND THE COST OF SUCH WITNESS SHALL BE PAID BY THE STATE."

In line 130, bracket "(f)" and insert "(g)" in lieu thereof

In line 142, bracket "(g)" and insert "(h)" in lieu thereof

In line 148, bracket "(h)" and insert "(i)" in lieu thereof

In line 183, bracket "(i)" and insert "(j)" in lieu thereof

In line 185, bracket "(j)" and insert "(k)" in lieu thereof

In line 187 and 201, bracket "(h)" and insert "(i)" in lieu thereof

In line 204, bracket "(k)" and insert "(l)" in lieu thereof

In line 206, bracket "(h)" and insert "(i)" in lieu thereof

In line 209, bracket "(l)" and insert "(m)" in lieu thereof

DEPUTY SPEAKER BELDEN:

Will you remark further on the bill as amended?

REP. CUNNINGHAM: (148th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Richard Cunningham.

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REP. CUNNINGHAM: (148th)

Mr. Speaker, through you, to the proponent of the bill, I believe, Rep. Farr. I noticed that under the present law, we have a second crime which was, let's see, I believe, beginning at line 22 of the file copy, with regard to impairment. I also find that we have eliminated the right which covers the area of blood alcohol from .07 to .10.

I also found that we have eliminated the right of prosecution to introduce those blood tests and the evidence at those levels. My question first, to Rep. Farr, is how do you prove that crime if you can't introduce that evidence?

DEPUTY SPEAKER BELDEN:

Rep. Farr, would you care to respond.

REP. FARR: (19th)

I'm sorry, but I'm not clear where we eliminated the right to introduce the evidence.

DEPUTY SPEAKER BELDEN:

Rep. Cunningham, you have the floor, sir.

REP. CUNNINGHAM: (148th)

Well, if you first look at the file copy at line 104, where we eliminated and we also further eliminate

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that entire subsection beginning at line 86 of the file copy in the first amendment which we adopted, Rep. Blumenthal's amendment, we eliminated that and specifically stated that we basically eliminated entirely the opportunity between the file copy and the amendment to introduce any blood test except under per se or if you are going under the first part of section a under the driving under the influence.

Those are the only times you can introduce the blood test and if you are under the first part, other than per se, you may only do so at the request of the defendant.

DEPUTY SPEAKER BELDEN:

Rep. Farr, would you care to respond?

REP. FARR: (19th)

Yes, I don't read the bill, the file copy, that way. It eliminates the reference to how the evidence is treated because the fact that now the crime itself becomes the alcohol content in your blood, and you don't need to have reference to how that evidence is treated because that in effect becomes the crime.

REP. CUNNINGHAM: (148th)

Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

Rep. Cunningham.

REP. CUNNINGHAM: (148th)

Yes, Mr. Speaker, I am afraid that Rep. Farr doesn't quite understand the section, because we have presently two crimes. We have first under subsection a which is found in the file copy beginning at line 4, and then we have subsection b beginning at line 22 of the file copy.

Now beginning at line 22 going through line 28, which is if you read for example subsection d which begins at line 86 which we have now eliminated in its entirety under the amendment already adopted, which refers back to subsection c, which in its second line refers to subsections a and b, so I am sort of drawing back to how this comes under it, since subsection b going from line 28 to 38 discusses a situation where you have blood alcohol from .07 to .10. We have eliminated the ability of the prosecution to introduce that, I'd like to know how you prove that offense.

REP. FARR: (19th)

Through you, Mr. Speaker

DEPUTY SPEAKER BELDEN:

Rep. Farr.

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REP. FARR: (19th)

To Rep. Cunningham. I don't read the file copy as having eliminated that ability to introduce that evidence.

REP. CUNNINGHAM: (148th)

Mr. Speaker, through you.

DEPUTY SPEAKER BELDEN:

Rep. Cunningham.

REP. CUNNINGHAM: (148th)

Yes, Mr. Speaker, though you, if I may draw Mr. Farr's attention to line 104, where there is beginning on line 104 there is a bracket covering which was subsection 3 under subsection d and I quote, this is information eliminated, okay, [okay, evidence that at such time the ratio of such alcohol blood was more than .07 of .10 of alcohol by weight but less than .10 of 1% of alcohol by weight constitute impairment than the meaning of this section.

That's going back to the subsection b.

Before evidence that at such time as the ratio and so forth, how do you. I mean I just don't see how we are able to introduce evidence of subsection b.

DEPUTY SPEAKER BELDEN:

Rep. Farr, would you care to respond?

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REP. FARR: (19th)

Through you, Mr. Speaker, to Rep. Cunningham.

The language at the present time as language as how to treat certain evidence because it only raises certain presumptions. We eliminated the reference in how you treat the evidence because you don't have to spell out in statute how you treat evidence of an offense.

I think that the file copy works. I'd be happy to discuss this privately with Rep. Cunningham as to his interpretation, but I feel that this statute in the file copy works.

DEPUTY SPEAKER BELDEN:

Rep. Cunningham, you have the floor, sir.

REP. CUNNINGHAM: (148th)

Mr. Speaker, at the present time, I don't see it. If I see it, I might change my mind, but as of right now, I don't see how I can support a bill which in my opinion weakens the law instead of strengthening it. I happen to believe our error in our drunk driving laws is not that we have laws that we can't convict people on, but that we aren't doing, we are letting them off the first time, and I think that is our basic problem, and we aren't deterring the conduct.

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DE. I don't see right now that this bill is particularly valuable in this regard, and I will listen to the debate. If I can be convinced otherwise, I would support the bill, but as of this moment, I am opposed to it.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Are your minds made up?

If so, staff and guests come to the well of the House. Immediate roll call is ordered. The Clerk please announce the roll call.

CLERK:

The House of Representatives is now voting by roll. All members please return to the Chamber immediately. The House of Representatives is voting by roll. All members please return to the Chamber immediately.

DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded.

The machine will be locked. The Clerk please take a tally.

REP. TAYLOR: (79th)

Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

Rep. Taylor.

REP. TAYLOR: (79th)

In the affirmative please.

DEPUTY SPEAKER BELDEN:

Rep. Taylor of the 79th in the affirmative.

The Clerk please announce the tally.

CLERK:

House Bill 5429 as amended by House "A" and House
"B"

Total number voting	145
Necessary for passage	73
Those voting yea	107
Those voting nay	38
Those absent and not voting	6

DEPUTY SPEAKER BELDEN:

The bill is passed as amended.

CLERK:

Calendar No. 575, House Bill 5998, File No. 1092,
AN ACT CONCERNING OBSCENITY. No recommendation by the
Committee on Judiciary.

REP. NARDINI: (115th)

Mr. Speaker.

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call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

The question before the chamber is a motion to adopt calendar No. 783, Substitute for House Bill No. 5685, File No. 1164 as amended by Senate "A". The machine is open. Please record your vote. Has everyone voted? Senator Scott. Machine is closed. Clerk, please tally the vote. Result of the vote, 28 yea, 6 nay, the bill is adopted.

SENATOR ROBERTSON:

Mr. President.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, I would seek suspension of the rules to immediately transmit this item to the House.

THE CHAIR:

Any objection? Hearing none, so ordered. The Senate will stand at ease. Clerk, please call the first item.

THE CLERK:

Page 7, calendar 914, House Petition #13, House Bill 5429, Files 687 and 1130. An Act Establishing A "Per Se" Standard For Operating A Motor Vehicle While Under The Influence Of

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Intoxicating Liquor. (As amended by House Amendment Schedules "A" and "B").

No Recommendation by the Committee on Judiciary.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Thank you, Mr. President. I would urge acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

Will you remark?

SENATOR JOHNSTON:

Yes, thank you, Mr. President. This legislation, which is a very significant piece of legislation, would make it unlawful to drive on Connecticut highways and streets if that person is driving with a blood alcohol level of .10% or more. Upon an arrest, there would be a blood alcohol level test administered to that person and pursuant to the House Amendments, a second test would have to be given in at least thirty minutes after the first test in order for the first blood level alcohol test to be admissible in a "Per Se" prosecution. However, the admissibility of that first test would only be upon the fact that the person charged was given a reasonable

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opportunity to consult with his attorney before taking the tests. This would eliminate current law which establishes a rebuttable presumption that a person was driving under the influence of alcohol if that person is stopped, arrested and given a blood alcohol test which establishes a blood alcohol level of .10%. I say this is a pretty significant piece of legislation, perhaps one of the most significant pieces in the drunken driving area because it was one of the best attended and most emotionally reactive public hearings before the Judiciary Committee, and while there is merit to this legislation, I believe that it's also something that has become political because the drunk driving area is one that has stirred public interest profoundly, and I believe that in certain instances, there have been many proposals that have been knee-jerk reactions to the interest stirred in the public interest sector, but this is a good piece of legislation and there are many, many states across the nation that have this sort of "Per Se" standard. There's no question that there is a tragedy occurring on our streets and highways every day in this state, and given the actions of this General Assembly in this session, I think we're finally making it clear that the public supports stricter measures and we are seeking to erode the social acceptability of driving while intoxicated and people just

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won't stand for it. I urge the adoption of this bill.

THE CHAIR:

Will you remark further? Senator Giulietti.

SENATOR GIULIETTI:

Mr. President, through you to Senator Johnston. I see under the OLR report, will this bill eliminate the option of going to a traffic school on your first violation?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, no, it will not eliminate that opportunity.

THE CHAIR:

Senator Giulietti.

SENATOR GIULIETTI:

And my other question is, what about the old feeling of innocent until proven guilty? How is that? Is this, in a sense, against that general feeling that we have for the law?

THE CHAIR"

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, I think that that is a fair question and I think that you have hit upon perhaps the dis-

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comfort that many lawyers and many people feel with this sort of legislation. I do believe that this is constitutionally based and perhaps it's imputis is different from that that is presently on our books here in Connecticut. It's a lawful one and a constitutional one but, you are right, it establishes by machine rather than by the presentation of evidence in addition to tests by machine a basis for prosecution while driving under the influence.

THE CHAIR:

Senator Giulietti.

SENATOR GIULIETTI:

I'd just like to make the general comment. I like the idea of the intent of the bill, but I want a stricter drunk driving legislation but I'm concerned that we still have the - still in this case, an individual on his first conviction still has the opportunity to go to a driving school. I'd like to see that change and that's not here in the bill and maybe that's something I should have done with an amendment or something I will do next year. Just a general statement, I think innocent until proven guilty is an important thing in being convicted solely from the use of a machine. I just have a little bit of a problem with that "Per Se" legislation.

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THE CHAIR:

Further remarks? Senator DiBella.

SENATOR DiBELLA:

Thank you, Mr. President. Through you to Senator Johnston. Senator, I think the issue of "Per Se" in the way the law presently exists with the question of constitutionality, it would be helpful to those lay people in this body which the vast majority are, for you to relate an actual situation in terms of how presently the law works if one's arrested for drunken driving and how this would change the law and how that same individual under those circumstances would be treated under the "Per Se". Mr. President, would that be possible?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

I'll give it a try. Through you, Mr. President, first as a matter of background. There have been "Per Se" proposals offered in the Connecticut General Assembly in previous years and the feeling was that those proposals which were based on conclusive presumption were not constitutionally based "Per Se" standards. Under the present law, if a person is stopped on a Connecticut highway and arrested and given a blood alcohol level test, that is really creating a rebuttable presumption

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that can be butted by the person charged. It creates a rebuttable presumption that that person was driving his or her motor vehicle while under the influence. Generally there is other evidence offered by the prosecution which helps substantiate and enhance the prosecution of that case. Under this standard, upon being stopped, arrested and administered a test, the first thing that would occur is that she'd have the one test administered and if that's - well, you'd have the first test administered and then you'd have to be given a reasonable opportunity to call and consult with your attorney and then a second test would have to be administered in order to make the first test admissable in a prosecution. If your blood level was - alcohol level was found to .10 or more, you would likely be convicted for driving while under the influence because this law would make it unlawful to drive a motor vehicle or operate a motor vehicle with that blood alcohol level in your blood.

THE CHAIR:

Will you remark further? Senator Upson.

SENATOR UPSON:

Yes. Mr. President, through you to Senator Johnston. Supposing someone refuses to take the test, are the penalties less for refusal than for taking the test and flunking it?

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THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Upson. If a person refused a test, present law would effectuate and there would be an automatic suspension of the license for six months, and answering the second part of your question, is that a more severe penalty than taking a test, I'm not certain I can answer that.

SENATOR UPSON:

Mr. President, through you ...

THE CHAIR:

Senator Upson.

SENATOR UPSON:

... but if someone takes the test and flunks then they're going to go to, and assuming they'd have to, they can go for the program on the first offense, they can go for the program, the alcoholic rehabilitation, but on a first conviction they're going to get automatic forty-eight hours in jail. Is that correct?

THE CHAIR:

Senator Richard Johnston.

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SENATOR JOHNSTON:

Through you, Mr. President, to Senator Upson, of course one's participation in the alcohol education program would be in the discretion of the court and secondly, if that were not to apply, yes, given recent legislation that's gone through the House of Representatives and the Senate, a first conviction, whether it be the first time around or the second time after a participation alcohol education program, would be forty-eight in jail or a hundred hours of community service.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Yes. Mr. President, through you again to Senator Johnston, I believe you stated this is a favorable report from the Judiciary. That's not correct, is it? This was a Petition in the House?

SENATOR JOHNSTON:

Yes, it was a petition.

THE CHAIR:

I think under the rules by reason of the action that's already been taken, it is a favorable. Initially it was not, there was no action taken by the Judiciary Committee and, under the rules, at that point, for all intents and purposes an un-

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favorable and the unfavorable was overturned.

SENATOR UPSON:

All right. Mr. ...

THE CHAIR:

If you look at the rules, the rules then will indicate that thereafter it becomes a favorable.

SENATOR UPSON:

Mr. President, I have voted and supported the twenty-one year old age. I've supported seatbelt legislation. I've supported uniform closings. I did want to support the limitation of happy hours which is going to be done partially by the Liquor Control Commission. However, to allow this to pass and allow someone who does not take the test to get off lighter than for someone who does take the test and fails, I don't think is fair.

THE CHAIR:

Wish to remark further? Senator Eaton.

SENATOR EATON:

Mr. President, I rise to support this bill. Drunk driving is aggressive alcoholism. It hurts. It maims. It kills, but because our society has been excessively tolerant of the negative aspects of alcohol abuse, almost everyone is victimized but the drunk driver. Society is held accountable. The liquor

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industry is held accountable, the bar-tender is held accountable, the victims of the drunk and their families pay the largest price of all, but too often, the drunk driver, the individual responsible, pays virtually no price for his assault on life and limb. Ours is a society which is built on individual accountability and for I think the first time in our legislative history, that accountability is being placed where it belongs, on the person who abuses alcohol and his or her right to drive and threatens all of society in so doing. I urge the circle to join with the sponsors of the legislation to at long last focus on the problem where it begins, with the drunk driver.

THE CHAIR:

Senator Richard Johnston for the second time.

SENATOR JOHNSTON:

Yes, Mr. President. I would just admit that this measure might be supported unanimously, and if there is no objection, I'd like to place it on consent.

THE CHAIR:

There are other people that wish to remark. Senator Kevin Johnston followed by Senator Miller.

SENATOR JOHNSTON:

Yes, Mr. President. This is a bill that will affect the

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lives of the people of this state and I think that we're all concerned about drunk driving legislation as some of the actions that we've taken earlier this session and I was somewhat concerned about it and I did speak with some of our local police and asked them about the whole issue of drunk driving and this particular recommendation itself, and, needless to say, they're very concerned about drunk drivers and there are a number of convictions and arrests that have been taking place, but the only, this was one issue where many of them were hesitant and they felt that certainly a test ought to be done but to be convicted by the machine was difficult, that there were circumstances and evidence that ought to be explained in court. Our whole system of justice is based on the ability to be tried by our peers, but what I think this legislation does, it tries us by machine, and Senator Johnston mentioned that. A machine will decide your fate, and, in my opinion, that decision ought to be up to our judges and the juries in our judicial system, and therefore I guess, even though it may not be popular, I oppose this bill.

THE CHAIR:

Senator Miller followed by Senator Streeter.

SENATOR MILLER:

Thank you, Mr. President. I rise to oppose this bill and

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urge its rejection because I feel that it's another chip in what we consider rights and liberties, to go to trial and have your day in court rather than have automatic things. Here we have in this bill automatic fines and penalties where a judge won't have a say. Pretty soon, with things like this, we won't need any judges, and I rise to oppose this and urge its rejection.

THE CHAIR:

Senator Streeter.

SENATOR STREETER:

I rise to support this bill. It's high time we had a bill like this. We have discussed it in previous years and, at last, we have a piece of legislation before us that can do the job. Forty-two states have already passed this kind of legislation. The federal courts have upheld the idea of a "Per Se" law. It is constitutional, but more than that, the point one blood alcohol content test is a test you will not have that amount of alcohol in your blood unless you had been drinking way in excess. I think it's something like twelve beers in an hour, so in a way, you're being judged by your beers instead of by your peers, but the majority of people who are pulled aside for drunk driving will not have that point one and they will still have the kinds of rebuttable presumption that Senator

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Giulietti was asking about. When you get up to this amount of alcohol in your blood, there is no question that you're unable to function, that you could possibly kill somebody, that you could possibly kill yourself, and in our society, we have come to the point where the victims and the rest of society have said, enough's enough, we have to have a law that has teeth in it where we do not have to constantly see people who are extremely drunk, getting into the court system, clogging up the court systems, trying to prove that they weren't drunk and this is a sure test.

Last year I had a bill on the breath-o-lizer or the alcohol analyzer and took a real look at that machine. Before you're given the test, every day, that machine is tested to see if it is properly function. Just before the test is given, it is tested again. Under this bill, you would have two tests. Therefore, you really have a lot of back-up evidence that this machine is operating correctly. I think it is a good way of making certain that a person's drunk before you arrest him and this bill will be a landmark piece of legislation in this session.

THE CHAIR:

Will you remark further? Senator Scarpetti.

SENATOR SCARPETTI:

Mr. President, through you, I stand to support this bill.

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I agree with everything Senator Streeter said. I think it's about time we thought about the victims and their families that have been killed by drunk drivers. This bill might make them stop and think before they take that extra drink. Thank you, Mr. President.

THE CHAIR:

Senator Eads.

SENATOR EADS:

Thank you. Through you, Mr. President, a question to Senator Johnston.

THE CHAIR:

You may proceed.

SENATOR EADS:

Thank you. Senator Johnston, regarding the second test, is the second test taken on the same machine, and how correct are these machines? I mean is it like the emission testing that you can go from one place and pass, the other place, you fail?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, may I have one moment?

THE CHAIR:

The Senate will stand at ease. Senator Richard Johnston.

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SENATOR JOHNSTON:

Through you, Mr. President, I wanted to examine my information ...

THE CHAIR:

You may proceed.

SENATOR JOHNSTON:

Thank you, Mr. President. I have, through you, Mr. President to Senator Eads, I have nothing in my information that bears on the accuracy here of the blood alcohol level test, but to answer your first question, the second test would be of the same sort as the first administered.

THE CHAIR:

Senator Eads.

SENATOR EADS:

Through you, Mr. President, Senator Johnston, my question was, would it be given on the same machine that it was done the first time or do they have an extra machine just to be able to balance it out?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, there's nothing in the amendment or the legislation that suggests that it has to be the

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same machine - just the same sort of test.

THE CHAIR:

Senator Eads.

SENATOR EADS:

Thank you, Mr. President.

THE CHAIR:

Senator Morton.

SENATOR MORTON:

Mr. President, there is additional information I think that should be made a part of the record of the debate taking place today. If justice were equal, if all people were given justice equally, then I could say, let's move forward with this legislation. I'm not quite sure that, well, I can say for sure that justice is not always equal. I have received calls from constituents of mine, who were black, who were in the wrong place, in the wrong community, at the wrong time, that were arrested and accused of being drunk. Looking for a church, it was dark, they were driving along. They were arrested and thrown in jail and accused of being drunk. This to me seems to be an opportunity for the police to harass blacks who might be in the wrong place at the wrong time. I have some serious questions and I would like for you to address them for me to assure me that this will not be a license for a policeman to arrest black

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people and find maybe that they're drunk but they're not arresting them for driving drunk.

THE CHAIR:

Will you remark further? Senator Zinsser.

SENATOR ZINSSER:

Thank you, Mr. President. I rise in support of the bill, and I would agree with what Senator Streeter has already stated. It's about time that we got serious about drunk driving. It's about time that we started thinking about the victims because, unfortunately, when somebody is in an accident with a drunk driver and they're pronounced dead on the scene, they're not given a day in court. The decision's already been handed down, and it seems to me that we're here trying to protect, if you will, those individuals who want to go out and drink and then drive either home or to some place else, we want to make sure that their rights are protected, and we should, to a point, but when they are in danger of causing an accident or a death on the highway, then I think we have to take another look at what we're doing here in the state of Connecticut. We kill more people on the highways than we kill in war, and yet, we sit around a circle like this saying, if somebody is stopped for drunk driving, are their rights going to be protected? I think in our system of justice, their rights will be protected, but

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I'm concerned about the accidents that they can cause, the deaths that they can cause, the injuries that they can cause because we allow them to go out and drive drunk on the highways of Connecticut. I had a good friend of mine call me up not too long ago, an attorney, and says, "Carl, I want you to realize that that legislation in there that you are going to be passing or not passing affects your friends who may be stopped and tagged as driving drunk," and he's right. They may be, but then they shouldn't have been driving in the first place, and it could also be my friends that'll be laying on a slab in a morgue because they were killed by a drunk driver, and that's the decision we have to make today, and if we have to get a little bit tough, we have to go to one side or the other, then I think we get the drunks off the road and I think this, which is the only alternative I see right now, is a way of doing that, and because of that, I will support this legislation as it has been supported in forty or forty-two other states in the union, and I would urge adoption of the legislation. Thank you, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Mr. President, not to prolong the debate, I just would

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like to make one point clear for the record. I'm going to oppose this piece of legislation and it is not because I am soft on drunk drivers. It is not because I want my colleagues to be soft on drunk drivers, and I don't want anybody in the state of Connecticut to think that Connecticut's laws are soft on drunk drivers. They are not. They are very strict. I suggest to you for any number of reasons that have been suggested by other members of this circle which I will not elaborate on, that this is not a proper way to handle this subject matter. Until we in Connecticut are willing to allocate sufficient resources to deal with the problem driver who doesn't care what the law is. He cares more about drinking than about you or I, and until we decide to bite the bullet and answer that question and make society change its mores, then we're going to continue to have drunk drivers on the road, and what we do by legislation of this nature is to diffuse the effort, is to misdirect the effort and our energies and our resources, and we all ought to get behind how do we get that problem driver, that problem drinker, off the road? How do we deal with his problem? How do we deal with the children in our society who drink? That's the problem, and that's where the solution lies, not in legislation like this that affects the civil liberties of every person in this room. Let's bite

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the bullet and solve the problem and not deal with it in this kind of emotional way. Thank you.

THE CHAIR:

Senator Upson, you have already spoken once. I'll call those who have not already spoken and get back to you. Senator Benson.

SENATOR BENSON:

Thank you, Mr. President. I'd like to rise in support of this bill and respectfully disagree with statements made earlier, specifically Senator Avallone's. We're not seeking to take away anybody's civil liberties with this legislation. They have all of the procedures of appeals that are available through the judicial system. What we're saying with this legislation is that a point one o level percent alcohol in our blood stream by weight is drunkenness. According to the best scientists available to us at this point, all evidence indicates that one has to consume an awful amount of liquor, an awful lot of liquor in a relatively short period of time to achieve that state. I think that it is a step in the right direction. Clearly establishing a speed limit at 55 could be considered in a lot of, in a lot of ways as an arbitrary one. As I understand, our state highways are engineered to accomodate 65 miles per hour, so why do we have 55 miles an hour? Clearly it saves lives and

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is in the best public interest. As I stated earlier, best science indicates that .10 blood level is sufficient to bring about one heck of a alcoholic stupor and I think in order to save and protect citizen's lives in the state of Connecticut, we should proceed and pass this legislation. Thank you, Mr. President.

THE CHAIR:

Will you remark further? Senator Markley.

SENATOR MARKLEY:

Thank you, Mr. President. Too many times in this session I've heard laws made into anti-drunk driving laws or pro-drunk driving laws, and I think this is happening again. I don't believe that I'm second to anyone in my feeling that penalties must be strict for drunk driving. I think they could be stricter still than they are now. However, I don't think that we should be going after drunk driving as indirectly as we are in this case. What we're dealing isn't a law that affects drunk driving, it's a law that affects the rights of the accused, and I think it's a bad law. I'm going to oppose it. At the moment, we've got a rebuttable presumption that if somebody has a point one blood alcohol level according to a machine, it's a piece of evidence indicating that they were driving drunk. I think that's a perfectly fair way of handling it. To say that it's a con-

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clusive piece of evidence on its faith, I think is wrong. I think it's an exception that we wouldn't make for any other sort of crime. We watch out for the rights of every criminal, not just drunk drivers, murderers, thieves, embezzlers, whatever it is. It doesn't matter what we might think of the crime they're committing. I think there's a proper procedure that has to be followed, and I think that this somehow is an attempt to go around that procedure and I think it's wrong. To say that forty-two other states have this law, I think is not really an argument that we should too. I think that I wouldn't care if forty-nine states have it. I think it's wrong and I think Connecticut should resist it. I think we should come down on people who abuse alcohol. I think we're moving in that direction, but I don't think that we should cloak every single move behind this banner of anti-drunk driving.

THE CHAIR:

Senator Santaniello.

SENATOR SANTANIELLO:

In my arguments, I'm not going to try to be repetitious, so I'll avoid what's been said hopefully and try to get on to some new material. I think what the circle here, the ones that are opposing this amendment, are confusing the difference between the rights and a privilege. Driving a car is not a right

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but it's a privilege. It's a licensed privilege. Certain standards have to be met in order for you to drive that car. The first is getting a driver's license. You have to pass a certain test. If it was a right, there wouldn't be any licensing to it. We'd all hop in cars and go. This being attached on is a condition of keeping your license is a fact that if you're caught driving while you're drunk, you lose your license and you are punished. We're not taking anyone's right away. The fact that they're in a vehicle that is governed and licensed by regulation and that is a privilege is not (inaudible) anyone's right when they do something contrary to their license or contract that they have taken with the state and with the motor vehicle department in order to have that privilege and drive. It's a contract. It's a contract between the state of Connecticut under certain conditions which they allow you to retain that privilege. There are defaults. There are punishments for a violation of that contract, some are fines for speeding, some are imprisonment, depending on the degree, but this is what we agree to when we get our driver's license whether we realize it or not, so we're not talking rights here. The point which I think is the greatest point, now it would be a violation of a right if somebody was walking down the street and staggering and they grabbed him and

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brought him in and had him take the "Per Se" test, now that would be a violation of the right because there's no licensing in there. There's no licensing effect in there whatsoever. Now that's the distinction I'm trying to make for where you have a licensing agency and where you (inaudible) licensing on there and it's a privilege and it's classified it's a privilege not as a right, this is the distinction between the two, so the argument of being and losing a right I don't think holds true in this case, on this particular case. If it was some sort of a conduct that we were doing, that didn't have any licensing to it, then I would say then that would be classified, a similar law to this effect would be classified as a violation of right. That was all I wanted to add to. I am going to support this bill on that basis and other arguments that I heard for it. Thank you.

THE CHAIR:

Senator Schoolcraft.

SENATOR SCHOOLCRAFT:

Yes Sir, Mr. President. I have some questions for Senator Johnston, through you. Senator Johnston, I believe my information is if a hundred and forty pound person had four drinks in one hour, he would most likely have about a .10, is that some of the figures that I've - are fairly accurate?

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THE CHAIR:

Senator, not on your personal experience, but just as an example. Senator Richard Johnston.

SENATOR JOHNSTON:

Yes, thank you, Mr. President. Through you, Mr. President to Senator Schoolcraft, did you recite a weight of a hundred and forty pounds?

SENATOR SCHOOLCRAFT:

I think this is some figure I saw that four drinks in one hour time limit would be approximately a hundred and forty pound person, I think it has a weight factor involved, that he probably would be close to the borderline. Am I ...

SENATOR JOHNSTON:

Through you, Mr. President, my information is that for a person a hundred and forty pounds, and of course, this may differ from person to person, it would take four and one third twelve ounce beers to reach a .10 blood level and a, three drinks containing one and half ounces of eighty-six percent or proof alcohol.

SENATOR SCHOOLCRAFT:

Okay. Mr. President, through you to Senator Johnston ...

THE CHAIR:

Senator Schoolcraft.

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SENATOR SCHOOLCRAFT:

Senator Johnston, there's a couple of other questions. I believe if a person was right on the borderline of say, .10 and he took his first test, he would flunk the test. Now, I understand between the first and second test, that he has a right to call his attorney and have him present for the second test. Now I'll continue to make it quicker, so a reasonable time for an attorney to arrive on the scene and, knowing my attorney I don't think a reasonable time is more than an hour or two hours, that's probably unreasonable for him but, so if a person was right on the borderline on the first test, he waited until his attorney got there which is probably an hour later, he most likely would not fail the second test, I believe, so where do we stand now is there's a time delay between the first and second test? Is he guilty or not guilty?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, pursuant to House Amendment "A", the second test would have to be given within the next thirty minutes after the first test, so it's not based on, thankfully, it's not based on the attendance of the lawyer. What House Amendment "B" states is that the person that has been

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arrested must be given a reasonable opportunity to consult and talk with his attorney.

SENATOR SCHOOLCRAFT:

Okay.

THE CHAIR:

Senator Schoolcraft.

SENATOR SCHOOLCRAFT:

Through you, Mr. President, I doubt very much if an attorney's going to arrive on the scene in a half an hour, but, if the person, you say within thirty minutes, I don't know whether that's time delay enough, if the person took the first test and knew he flunked, if he refused the second test, what would happen?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Schoolcraft, to the extent that for the admissibility of the first test to occur in the prosecution, a second test has to be administered. If the second test was refused, then I believe it would (inaudible) very much in the same instance as refusing a first test and would be an automatic suspension of the license for six months, and with respect to your first remarks relative to the time lapse, if you look at your, the most recent legislative review

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analysis of the amended bill, there is a Table 2 which identifies the hours in which drinks are consumed and if you look between perhaps one and two hours or two and three hours and see the relationship between blood alcohol level and, in those time periods, perhaps you can deduce what might happen in thirty minutes.

SENATOR SCHOOLCRAFT:

Okay.

THE CHAIR:

Senator Schoolcraft.

SENATOR SCHOOLCRAFT:

Through you, Mr. President, okay, thank you, Senator Johnston. I do have a problem, not with the .10, I have a problem with the, like Senator Eads, like emission. We've heard consistently comments and talks about the emission station, that humidity and temperature affects his machines and you're being convicted by a machine, and through you, Mr. President, to Senator Santaniello, he says, he spoke eloquently about the rights. I don't think this has anything to do with the rights of driving. I think (inaudible). I think we're at the stage where the person has a right to be proven guilty or innocent and I don't think it has any effect on (inaudible).

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THE CHAIR:

Do you wish to remark further? Senator Consoli.

SENATOR CONSOLI:

Mr. President, a couple of questions for Senator Johnston please.

THE CHAIR:

You may proceed.

SENATOR CONSOLI:

Senator Johnston, I'm having trouble. I'm looking at File No. 1130 and I'm looking at sub-section h, line 148, and it states what happens to one who violates the provisions of sub-section a and it calls for, in a first offense, a fine of not less than five hundred dollars nor more than one thousand dollars or imprisoned not more than six months or be both fined and imprisoned. What happened to the alcohol rehabilitation program and does that, if it appears some place, I guess it doesn't. I see an amendment over here. It seems to be in two different locations and I don't understand it.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Consoli, the availability of the alcohol education program is not contained in the

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same statutes with respect to penalties for driving while intoxicated and so you're accurate in pointing out that they're in two different portions in our Connecticut state statutes, and secondly, please remember that we have passed different penalties for driving while intoxicated so when you refer to the penalties that you just recited for the record, those are the present penalties for the offense but will be changed.

THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Mr. President, through you to Senator Johnston, you might as well stay standing 'cause I have about three or four more questions, and I still don't understand. You say it will be changed? It will be changed by what?

THE CHAIR:

Senator Richard Johnston. He wants to know, Senator, whether or not one can also take advantage of the school program with the passage of this law. Am I correct, Senator Consoli?

SENATOR CONSOLI:

Correct. I would like to know where it does that.

THE CHAIR:

Well, he'll explain that. Senator Richard Johnston.

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SENATOR JOHNSTON:

Through you, Mr. President, just for the record, you know, the stiffer penalties have passed through the House of Representatives and the Senate and I may be precipitous in thinking the Governor will sign it, but I expect he will and that's what I refer to with respect to stiffer penalties. Answering your, the question that was framed for you by the Lt. Governor, there is still an option of participating in the alcohol education program in lieu of these penalties for driving while intoxicated which rest fully in the discretion of the court. If you, do you wish a reference to that section? If that what you're after?

THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Through you, Mr. President, what confuses me is that we go through the trouble of identifying what the penalties are and then you're saying some place else in the same statute, you're saying you don't have to comply with those penalties, and that's the problem I ... see, I'm not a lawyer. I don't understand why you do things like that.

THE CHAIR:

Senator Richard Johnston.

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SENATOR JOHNSTON:

Gosh! Through you, Mr. President, I'm not certain how to respond to that. Could you reframe the question?

SENATOR CONSOLI:

I'll go back to, through you, Mr. President, I'll go back to my reading of File No. 1130, line 148, sub-section h. It states what the penalties are for a first offense. Why does it not state right there that those are not the penalties for the first offense? Why do we have two sets of penalties for the first offense?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Consoli, because that is the present state of the law and that's a reciting of the present penalties. If the legislation that has passed the House of Representatives and the Senate is signed by the Governor, that will be changed.

THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Through you, Mr. President, I have in my hand an amendment that was supposedly passed by the House, LCO No. 7120, and I do

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not know, and perhaps you can help me, I do not see any place where sub-section h and the File No. 1130 is eradicated and anything is substituted.

THE CHAIR:

Senator, under LCO No. 7120, Senator Johnston, do you have that? Line 129.

SENATOR JOHNSTON:

LCO No. 7120?

THE CHAIR:

Correct. Senator Consoli, are you following line 128 and does that in some way assist you?

SENATOR CONSOLI:

Mr. President, no, it doesn't because if that is so, if in the amendment, this would replace File Copy 1130, sub-section 8, it does not indicate it in the amendment.

THE CHAIR:

Senator Richard Johnston.

SENATOR CONSOLI:

It seems to be another set of standards.

SENATOR JOHNSTON:

Through you, Mr. President, the only response I have is I can refer the Senator to the earlier legislation that went through this House that makes references to those statutes, and in addi-

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tion, to answer an earlier question I now have a reference to you. All of this is contained in 14-227a of the statutes. h, sub-section h under that statute are the penalties for operation while under the influence and sub-section k is the participation in the alcohol education and treatment program which is the other available option.

THE CHAIR:

Further questions? Senator Consoli.

SENATOR CONSOLI:

Mr. President, I don't want to belabor the point. I regard this particular legislation as any other legislation coming through this House as extremely important and it would seem to me, if you could bear with me 'til you get my head on straight as to what we're doing, I would appreciate it. It is my understanding that LCO 1130 is the bill which we are discussing with two amendments on it, one amendment is LCO No. 7120 and the other amendment - somebody just took from me - but anyhow, with two amendments, we are discussing a bill which we are about to vote on shortly, and now you're referring me to another bill that was passed earlier which doesn't answer my question as to why we have two different standards for a first offense? I still don't understand that, and if we can't answer it then, see I want to vote for that, I want, I would like a definition

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of drunken driving and I would like to vote for a bill that is going to contain drunken driving, but I don;t want to vote on a bill that has standards for a first offense which are in disagreement throughout the statute.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Thank you, Mr. President. I want you to vote for it too, Senator, and I want you to feel clear in what's happening here, and I will try again to explain. Presently, there are certain penalties for driving while intoxicated. A piece of proposed legislation that has gone through the House of Representatives and the Senate and, if signed by the Governor would become law, would replace that section in those penalties.

THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Again through you, Mr. President, it has gone through the House and it has gone through the Senate. It has not been signed by the Governor yet, has it? Let me give you an instance, what if it is not signed by the Governor and we pass this piece of legislation. Now what happens?

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THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, then the recited penalties or the present penalties for driving while intoxicated would apply.

SENATOR CONSOLI:

Mr. President, I give up at this point and now I'll switch to a different question, and that is where did the point one percent alcohol by weight level come from? This is to Senator Johnston, through you, Mr. President. How accurate is it and I was always of the opinion, I've known people that if one has one beer in one hour, that person is not fit to drive and I know other people that could drink amounts five or six times greater and not be affected. How did that point one percent come about?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Consoli, the only thing that I can tell you is that the amount of alcohol and its affect on a person and the alcohol content in the blood by weight is very much affected by one's height and weight, so with reference to your scenario, one beer might affect you

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differently than it affects me. If you look on the back of the most recent OLR analysis, there is a Table 1 which gives a demonstration of the number of drinks to reach .10 in one hour by people weighted a hundred and ten pounds through two hundred and twenty pounds and that might be helpful.

THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Mr. President, through you, one comment and then I'll go on to my last question, and my comment is, Sir, that I have known persons equal weight, a hundred and fifty vs. a hundred and fifty, one is intoxicated on one beer and another one is not intoxicated on one beer, and that was the question, but again you didn't answer me, so I'll go on to the third question. It is my understanding that, I do want to vote for this bill by the way, it is my understanding from the debate here in the circle that one can use the same machine a second time in determining the alcoholic content of the blood and that would suffice as a second test. Was any thought given to requiring another machine be used in order to authenticate the results of the first machine?

THE CHAIR:

Senator Richard Johnston.

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SENATOR JOHNSTON:

Through you, Mr. President, quite honestly, I can't answer that.

SENATOR CONSOLI:

That's three. Thank you, Mr. President.

THE CHAIR:

Further remarks? Senator Matthews.

SENATOR MATTHEWS:

Mr. President, I am going to try to help Senator Consoli to vote in favor of this bill. I am not certain that I can, but you have quoted, Senator Consoli, on page 4 from sub-section 8 relative to any person who violates the provisions of sub-section a of this section shall, and then it lists for a first offense be fined, etc., etc., and you proceed to page 5 and you have sub-section i which indicates something else that will happen, section j, something else, and then you come to section k on page 5, and it says, "in addition to any fine or sentence imposed pursuant to the provisions of sub-section 8" which is the sub-section you referred to, "the court may order such person to participate in an alcohol education treatment program." I think that answer part, at least, of the question which you are asking, but one place it says that "there will be a penalty of five hundred to a thousand dollars"

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but where does it talk about the possibility of having the participation in the alcohol education and I think section sub k does that.

THE CHAIR:

Senator Consoli, for a second time.

SENATOR CONSOLI:

Mr. President, may I now turn my attention to Senator Matthews, and as I read line 204, sub-section k, I believe it says, if I can read correctly, "in addition to any fine or sentence imposed pursuant to the provisions of sub-section h the court may order such person to participate". It doesn't say in lieu of, in place of or initially. It says, "in addition to".

SENATOR MATTHEWS:

Mr. President, through you ...

THE CHAIR:

Senator Matthews.

SENATOR MATTHEWS:

... it reads to me that in addition to any fine or sentence there may not be any fine or sentence. It just says that in addition to such and it may be that there is no fine or sentence but that the educational program shall be instituted.

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THE CHAIR:

Senator Consoli.

SENATOR CONSOLI:

Mr. President, it's difficult not being a lawyer, but I believe in referring to sub-section h, line 148, it says "shall." "Any person who violates the provision of sub-section a of this section shall for a first offense be," and then on line, page 5, in sub-section k, it says, "in addition." Now unless, you know, unless the writers of this intended something other than what I'm reading into it, if somebody could correct my problem with reading, I'd appreciate it.

THE CHAIR:

Will you remark further? Senator Upson. Excuse me. Senator Benson.

SENATOR BENSON:

Thank you, Mr. President. If I could clear up a little bit of a misunderstanding relative to alcohol consumption. There is really no parallel in terms of how many drinks meet your lips relative to how much alcohol ends up in your bloodstream. The fact that an individual who weighs a hundred and fifty pounds can consume two or three beers and not in one's mind be intoxicated and a like individual also a hundred and fifty pounds could drink one beer and be in a drunken stupor, that says

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nothing about the individual's metabolism. The amount of drinks that they've actually consumed has little to do with their metabolism and what actually ends up in their bloodstream, so the best barometer that we have relative to one's ability to contain themselves within a stupor clearly has to be how much alcohol ends up in the bloodstream because that is inevitably what ends up changing our behavior patterns is how much actually ends up in the bloodstream. I think that's the critical thing that we should be talking about here is not if one's rights are being taken away, what actually is a reasonable level to establish to say that one is, in fact, intoxicated, and I think as I have indicated earlier, that one tenth of one percent, according to the best science that we have today is, in fact, the level. Let's get on with the vote. I think that we've beat this thing to death and that level is where it should be.

THE CHAIR:

Senator Barrows.

SENATOR BARROWS:

Mr. President, I stand opposed to this bill and amendment, because it seems like we're always putting a bandaid and I'd like to use the word bandaid over an artery again. It seems that just by looking at the figures that we have here is always -

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and I'm always thinking about the poor and a disfranchise, and it's always the poor, the ones that cannot afford, those are the ones that usually serve the time and the ones that can afford are the ones that don't serve the time. If we're going to have a drunk driving law and if we're going to have it effective, it's going to have to be a law that's going to be fair to everyone. If we're going to catch someone for speeding or someone for drinking, we should set it that they're going to be arrested and that's it, and when we start having they could be arrested but they could get out of it some way, then I think it's unequal and it seems like all the time it's always the poor, the ones that cannot afford are the ones that are serving time in our prisons because they cannot afford the best lawyer, they cannot afford the best prosecutor around, so I stand opposed to this bill. Thank you.

THE CHAIR:

Senator Larson.

SENATOR LARSON:

Thank you, Mr. President, through you, I find myself in the same dilemma I think that Senator Consoli found himself in. Just a ...

THE CHAIR:

Just a moment, Senator Larson.

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SENATOR LARSON:

... matter of ...

THE CHAIR:

Just a moment please. Let's show some courtesy to the people who are involved in the debate and desist from conversations and if you're going to carry on conversation, please do so outside the chamber. This is a very important bill. People want to be heard. Questions are being asked and responses made, and I don't think you can do it in an atmosphere of disorder or confusion, and I think you owe it to the body and to the people that are participating to show that courtesy of listening to the debate without interfering with outside conversations. Senator Larson.

SENATOR LARSON:

Thank you, Mr. President. Through you a question to Senator Johnston, and I would hope that, again Senator, just in trying to clarify some of the points that have been made earlier. Is it your understanding that if an individual is arrested on a first offense, assuming that this current piece of legislation and the previous piece of legislation are passed and signed by the Governor, it's a first offense and an individual is arrested, will they have the right at that time to enroll in the educational program?

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THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Larson, that opportunity would exist but it rests in the court's discretion.

SENATOR LARSON:

Okay. That opportunity exists but it rests in the court's decision. An individual now is apprehended. Assuming that all that we stated previously has taken place, this bill is passed, the Governor has signed it, an individual is pulled over. At that point he is given the test. Correct? Am I correct in that assumption? After he is given the first test, if that alcoholic content is shown to be .10 percent or greater, the individual's then given an opportunity one half hour later to take another test. Is that correct?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Larson, there would be a required second test at least thirty minutes subsequent to the first.

SENATOR LARSON:

And if that test also indicated that the alcoholic content

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level was still at that level or greater, what then happens to the individual? Can he at that point, is it that point that - if his alcoholic content is above that he is imprisoned.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator Larson, there would still have to be a court prosecution of the matter where the evidence of the testing would be presented to the court.

SENATOR LARSON:

And it's at that point that once that test, the evidence that has been presented would go to the court and at that time, before the court, he would have an opportunity based on the decision of the jury to opt for the educational program. Is that correct?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, I believe that's an accurate statement. Yes.

SENATOR LARSON:

I see Senator Avallone shaking his head, and I'm just

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wondering because I think that's what the point is.

THE CHAIR:

I think - let's try to abbreviate this. I think Senator Avallone probably knows the answer. I think what happens is that the individual accused makes application to the court, then it's up to the court to determine whether or not the person is a good candidate for the program. Senator Avallone.

SENATOR AVALLONE:

With your permission, Mr. President, may I attempt to clarify?

THE CHAIR:

You may proceed.

SENATOR AVALLONE:

The alcohol rehabilitation program presently is discretionary. The judge does not mandatorily have to put it in. At least, that's the way it is being implemented in our state. One makes an application to the court before you plead. The first process in going to court is to say I'm guilty or not guilty. If one says I am not guilty, then they have a right to select either a court trial or a jury trial. Before one enters a plea of guilty or not guilty, one has the opportunity to make an application for the alcohol rehab program. If that is denied, then you come in and you make your plea. If you plead not guilty, then you go

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before and have your day in court. Does that answer your question, Senator?

THE CHAIR:

Senator Larson.

SENATOR LARSON:

Yes, I believe that does, Mr. President. Thank you, Senator Avallone. Thank you, Senator Johnston.

THE CHAIR:

Further remarks? Senator Benson.

SENATOR BENSON:

If I might beg leave of the chamber to speak for a third time?

THE CHAIR:

Without - I didn't realize it was your third time. You were very brief, I take it. Without any objection, you may proceed.

SENATOR BENSON:

Thank you, Mr. President. I think it's important that the circle understand that there is nothing within this statute that would preclude the introduction of any mitigating circumstances in a court of law when a case is heard relative to a conviction relative to the arrest under this "Per Se" law. For instance, if one did come to court and there was suf-

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ficient medical evidence introduced that there was a metabolic reason why this individual maintained a blood alcohol level that was above normal that would certainly be taken into consideration by the judge and/or jury in the situation and I keep coming back to the fact that what we're doing here is codifying in law that we in the state of Connecticut recognize that a blood alcohol level of point one or one tenth of one percent by weight is, in fact, constitutes drunkenness. Therefore, I would certainly urge the circle's favorable vote relative to this bill.

THE CHAIR:

Further remarks? Senator Upson, is this the third time? Oh, your second.

SENATOR UPSON:

For the second time.

THE CHAIR:

We saved you for the last.

SENATOR UPSON:

That's the best for last, Mr. President. For those people who are touting this as being a panacea or a strict drunk driving law for the state of Connecticut, I don't see that. First of all, a first offender who does not go over usually .20, who has not committed a homicide or a heinous accident, let's say,

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or a bad accident, is going to get normally into the alcoholic rehabilitation program. On a second offense or a second time, obviously that option is not open to that person. Then we just passed a bill, I guess, I don't know if the Governor signed it, you have a choice of forty-eight hours in jail upon conviction or community service. However, if, in fact, the person does not take the test, no jail sentence, all a person does is lose their license for six months. In the "Per Se", we're allowing again. We not only do we still have the option if they don't take the test of merely losing their license, but here you have the first test. Supposing someone takes the first test under the "Per Se" and gets a .10, then thirty minutes later they say, wait a minute, I've already flunked the test, I might as well lose my license for six months. They won't take the second test and they're out. Talk about loose legislation. Loose drunk driving laws, so I'm against this.

THE CHAIR:

Will you remark further? Are you ready for the question?

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. I have a question, through you to the Chairman of the Judiciary Committee.

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THE CHAIR:

You may proceed.

SENATOR O'LEARY:

There is a supreme court case which came down on April the 30th, Francis vs. Franklin, and in that case, the supreme court held that a jury instruction that creates a mandatory presumption whereby the jury must infer the presumed fact if the state proves certain predicate facts violates the due process of laws if it relieves the state of the burden of persuasion on an element of an offense. In other words, it seems to me that a mandatory presumption here whereby merely proving certain facts creates that presumption violates the due process clause if it relieves the state of the burden of persuasion. Could the chairman distinguish this case from the law we are discussing today?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator O'Leary. This is not, rather the legislation before us does not establish conclusive presumptory legislation. This does not involve presumption at all. This legislation establishes the offense for driving while intoxicated which, under the law, is unlawful and

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involves no presumption, so I do not believe that the supreme court decision that you recited is on this point at all or bears on this legislation.

THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. Through you to the chairman of the committee, do our laws which establish that radar is effective and that proving under the radar machine the driver exceeded the speed limit and this amounts to a conviction or results in a conviction, are we talking about a law today similar to the statutes which cover radar or can you distinguish between the two?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President to Senator O'Leary, the analogy with radar that I might make with this legislation is that in a speeding case, one can rebut the results of the radar equipment. One might also be able to do that with respect to blood alcohol level machinery, but I don't believe that the radar situation rests on a conclusive presumption either.

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THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. Let me just pursue that line a little bit further. It's my understanding that if you're recorded on radar as having been speeding, there's a presumption of perhaps almost a "Per Se" that the radar was correct and that you had been speeding. Your attack then in court would be on the accuracy of the radar equipment. Is that correct?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, I believe that's correct, yes.

THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. Along those lines a little further. When we were talking about radar and conviction of speeding under radar and when we're talking about drunk driving, I believe that the penalties are markedly different. Are we talking about criminal prosecutions in both cases?

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THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Through you, Mr. President, I have sent counsel for the speeding statutes but it's my feeling that a violation of the statutes relating to speeding with a motor vehicle or violations of motor vehicle regulations whereas the statute dealing with driving while under intoxicated situation is a criminal penalty.

THE CHAIR:

Further questions? Senator, whether it be a motor vehicle violation or a drunken driving violation, it falls under the broad category of criminal offense. Further questions? Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. Under current law, the individual whose blood alcohol reaches a certain point may go into the court room and argue that although the test showed that he would be drunk under certain standard he may protest that he was not drunk. I have noticed in newspaper accounts that the conviction for drunk driving has risen dramatically in the past year or two and the question, through you, Mr. President, on that score, how successful have defendants been in arguing that notwithstanding

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their high blood alcohol level, they are not drunk? In other words that really goes to the the heart of the necessity of this law. Are we finding that many defendants who are shown to have under the test, the blood alcohol level, are escaping conviction currently?

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

May I have one moment, Mr. President?

THE CHAIR:

The Senate will stand at ease. It becomes obvious to the Chair that if you're going to have further discussions with members of your staff because of responses you have to make, it would seem to me that there's something lacking here in the deliberations of this chamber, that it would be appropriate if you went into your respective caucuses and discussed all of these fine and technical objections and questions and come out here with more adequate responses and more adequate presentation of this very important issue. It just isn't fair that we're going to confer time and time again with staff, hovering over our chairs, this does not dignify this body or exalt it. I think it would be timely if you're not prepared to respond to the questions that have been asked, that we take a brief recess, go

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to your respective caucusses, do a fine job of presenting whatever position you want to take and respond all your answers. Recess. Brief recess for ten minutes.

THE SENATE WAS RECESSED AT 12:05 P.M.

THE CHAIR: THE SENATE RECONVENED AT 12:25 P.M.

The Senate will come to order. I think it's important that at this point in order to bring some order to the debate, that each speaker continue to debate. I do not want anybody, whether it be from the House or from the staff, to be involved in any matter while this question is being debated. I don't think it does this body any good at all to involve ourselves in conversations which will interrupt the flow of the debate. This was not intended to offend any particular Senator, but as you preside over this body and you see what is happening, it seems to me that we do have some kind of confusion and chaos as that continues, so I will ask staff members, if you want to consult with a staff member, please do so in your caucus room. Please do not do it within the chamber. I've allowed that all during this session. It has not worked out well, so I urge you, under the rules, if I were to enforce them, if you look at your rules, staff members or anybody outside the membership of this chamber is not allowed to involve themselves in any way with individual Senators. Shall we proceed? Senator Smith.

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SENATOR SMITH:

Mr. President, in all due respect, this session has not been alone from the standpoint of staff members being present. I've only been here three sessions, but certainly this session has not been entirely different from the two that I served in the Minority.

THE CHAIR:

Senator Smith, it may be true, but there comes a time, however, when there could be some abuse. I think I have to watch that and I think I have to observe it. I try to be fair up here. There were times when perhaps all of us are not observing the rules and I overlook them, but I think there comes a time when we have to revert back to the rules and enforce them, and I am not an individual that wants strict enforcement of any rule. I think there should be some flexibility and I agree with you that in the past whether it be under the Democratic Majority or other Majorities, that I have served for a long period of time, that that has taken place, but I think also it has been abused. Let's go on with the business at hand. Further remarks on the bill? Senator Consoli.

SENATOR CONSOLI:

Mr. President, for the record, I just would like to express what bothers me about the whole business. It bothers me that

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tomorrow is the last day of the session and we must do something today and there's no time to correct what needs to be corrected, that would address three parts of the bill that are disturbing to me, the contradiction in the language and how the judge administers penalties. The second part is major, that is that one who refuses to take the test ends up with a lesser penalty than the one who submits to the testing. That is so wrong, and that one who takes the test the first time and is found, has a blood level content point one percent or better can then refuse to take it the second time, thus lessening the opportunity for penalty. And the third major flaw is that the second test is done with the same machine and it is extremely unfortunate that there is no time left to take any corrective action. I still don't know at this point how I'm going to vote. As I said before, I want so much to have a "Per Se" law to define drunken driving. I do have a problem with what I consider major flaws and if somebody could further help me out, I would appreciate it.

THE CHAIR:

Further remarks? Senator Robertson.

SENATOR ROBERTSON:

Thank you, Mr. President. Mr. President, we normally respond at a time where there's adversity in society. In

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times of war, we join together, and in my mind we have a growing and a very serious problem in society today and that's the abusive use of alcohol. I, in my nine years here, have seen attempts to rectify the problems, but for some reason, there always seems to be the watering down. We do have a problem. We have a problem of individuals who will go out and drink to excess and then, the greatest crime is they get into their automobiles to drive home or to drive elsewhere. We've dealt with this problem in minor ways. I think when you have a major problem, you must make a major effort. It's not necessarily that we're going to punish people, but I think the message has to be made loud and clear. If you're going to drink, if you are going to drink to excess, then don't get in your car, and if you do, you may not get in your car again for an awfully long time. I think that message has to be given to the public. My concern is that my family, my children could be driving home this very evening and some individual who has not gotten that message, may very well hit on my three children. Now I can tell you if that would happen, whether I thought that person deserved the proper course in court and I think everyone would, and it's a problem and I think it's a problem that this is a message. I believe we should pass this piece of legislation and give that message to those abusers. Thank you.

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THE CHAIR:

Will you remark further? Senator DiBella.

SENATOR DiBELLA:

Thank you, Mr. President. I came into this chamber today intending on being consistent with the approach I have taken on drunken driving in the past session, in this session of the General Assembly, supporting more stringent laws to enforce, to punish, oppose the amendments to water down legislation with respect to drunken driving, and there aren't many issues that come before this body that we don't come in here with our minds primarily made up and if one watches the process of debate in the Senate, you'll find that many, many of the decisions that are made on this floor are made by caucus positions in the respective caucuses in the two respective parties. I came in here to listen to the debate, but as I said, I came in here supportive of the position of "Per Se." I listened to distinguished Senator Johnston, chairman of the Judiciary Committee, point out that this is a very political and emotionally charged issue. I listened to Senator Robertson point out that we have a major problem and we need a major solution, we have to come together. I concur with that. However, I do believe that we have an obligation to be able to balance in this

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chamber what we do with respect to guarantees that people have under the constitution of this country. Several weeks ago, we went into extensive debate on "Con-Conn," which was the constitutional amendment, and you listened to your colleagues express the sanctity of the constitution and I think we all concur with that, and some of the risks that we were going to take if that legislation was passed, and I don't there's anyone in this room or this General Assembly that will deny the importance of that document, and I also listened to Senator Santaniello point out the fact that a driver's license is a privilege and not a right. To drive an automobile, I think we all agree, is a privilege extended by the State of Connecticut. One of the problems that I have, however, is the extension of a privilege to drive and to lose that privilege is one thing. This law calls for the incarceration, which in my assessment is a right that we have and that the state has to prove beyond a reasonable doubt that someone is guilty before we take their right to freedom away. I don't believe in the course of the debate on this floor that the proponents of this legislation have proven to me that the right to a fair trial under this type of legislation would prevail, and I say to you, I came to this chamber supportive of "Per Se." I have listened to the debate and I am not convinced that the rights, the fundamental rights that are guaranteed to

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us under the constitution, will be served if this legislation passes. I think there are defects in the legislation and I'm not soft on drunken driving. I am also cognizant of the major problem it exposes us to on our highways. I'm as concerned as you are with respect to my family when I drive on those highways, but I think we also have to be concerned with, cognizant of the rights that are guaranteed the people under the constitution. It is not been proven to me that this legislation will provide those guarantees. In the course of the debate today, it is not been proven to me. As a result, I am going to vote against this legislation and I well realize it may not be a very popular thing to do, but there are circumstances and conditions that we have responsibilities as legislators to make those hard decisions.

THE CHAIR:

Wish to remark further? Clerk, please make an announcement for immediate roll call.

THE CLERK:

An immediate roll call has been ordered in the Senate.

Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Question before the chamber is a motion to adopt calendar

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No. 914, House Bill No. 5429, File No. 687 and 1130 as amended by House Amendment Schedules "A" and "B". The machine is open. Please record your vote. Has everyone voted? Machine is closed. Clerk, please tally the vote. Result of the vote, 20 yea, 16 nay. The bill is adopted. Senator Benson, do you wish to be recognized?

SENATOR BENSON:

Thank you, Mr. President. If I may at this time have a point of personal privilege?

THE CHAIR:

Senator, you may proceed.

SENATOR BENSON:

Thank you, Mr. President. At this time I would like to introduce to the circle some students that came up all the way from the small town of Bozrah within the 19th district, from the Fields Memorial School, represented by Mr. Goldberg. Please stand and be recognized by the circle. There we go. (Applause). Nice to see you all today. Thank you very much, Mr. President.

SENATOR ROBERTSON:

Mr. President.

THE CHAIR:

Senator Robertson.

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SENATOR ROBERTSON:

Mr. President, I would move reconsideration on the previous bill, Sir. I was on the prevailing side, and I would urge members of the chamber to vote no.

THE CHAIR:

Motion is for reconsideration. Have a roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Motion is for reconsideration. of Senator Robertson. This is on the measure that was just voted upon, calendar No. 914, House Petition 13, House Bill No. 5429, File numbers 687 and 1130. Senator Robertson has moved for reconsideration. If you wish to vote for reconsideration, you vote yea, contrarily minded, nay. The machine is open. Please record your vote. Has everyone voted? Machine is closed. Clerk, please tally the vote. Result of the vote, 11 yea, 25 nay. Motion is defeated.

THE CLERK:

Page 5, calendar 683, Substitute for House Bill 7554, File

JOINT
STANDING
COMMITTEE
HEARINGS

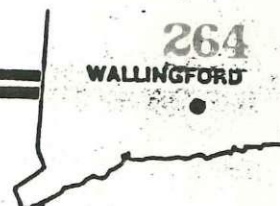
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FRIENDS DON'T LET FRIENDS DRIVE DRUNK

A CITIZENS' PROJECT TO REMOVE INTOXICATED DRIVERS
17 FRITZ PLACE
WALLINGFORD, CT 06492
(203) 265-6216



VOLUME II

NEWSLETTER

November 20, 1984

During the month of December, we will distribute RID christmas cards, they will be available the first week of December. Active members will be receiving 15 cards to send to relatives, neighbors, and friends. Friends of RID who wish to receive supplies of christmas cards may do so by contacting Nancy Ricci at 265-6216 or Sandy Fries at 269-0567.

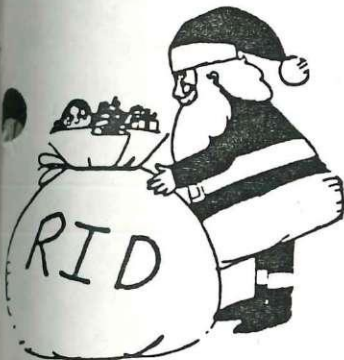
At this time we would like to give SPECIAL THANKS to.....

LARRY MERRIAM of Merriam Motors Inc. for his generous donation.

DICHELO DISTRIBUTORS for supporting our Bumper Sticker campaign.

STATE RID GOALS

1. Raise legal drinking age to 21 HB 5084
2. Uniform Bar Closings HB 5406
3. Eliminate Happy Hour's HB 5355-5087-5086
4. "Per-Se" Law-illegal Per Se means it is an offense to drive or otherwise be in control of an auto with a 0.10-percent or greater BAC. HB 5429



The ABCs of BACs

BAC - The legal basis for Drunk Driving convictions.

BAC Defined: Blood alcohol concentration (BAC) is the portion of blood to alcohol in an individual's system after consuming alcoholic beverages. It is expressed in Conn. as a fraction of a percent.

It's Implications: Blood alcohol concentration provides an objective index of intoxication and generally serves as an indicator of level of driving impairment. In the State of Conn., the point at which a driver is considered legally intoxicated and subject to conviction on DWI charges is when the BAC reaches .10%.

FROM ALL OF US IN THE WALLINGFORD CHAPTER OF RID, WE WISH YOU AND YOURS A VERY MERRY CHRISTMAS AND A SAFE AND HAPPY NEW YEAR...

Our next PUBLIC RID meeting will be Wednesday January 16, 1985
7:30 P.M. Simpson School Room 28. Looking forward to seeing you in the New Year.....

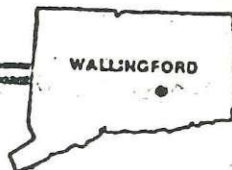
Instead, I urge all states to work toward an 18 year drinking age and the toughest drunk driving laws possible which will treat all adults fairly and in the same manner.

The 28 states with present drinking ages lower than 21 should band together and wait for 1987 - then 1988. Send the strongest possible message to Washington. D.C. is not the 51st state. Let it huff and puff all it wants - it cannot blow your house down.

Would the federal government really dare cut highway funds from 28 states united against it? Or push past a 10% cut? The day the federal government does start cutting highway funds because 18 or 19 year olds are legally drinking somewhere is the day I stop paying Federal income tax and instead hand it over, willfully I might add, to the state in question for use on its own highways. These measures may seem drastic, but "shotgun tactics" should be met with "shotgun tactics."



FRIENDS DON'T LET FRIENDS DRIVE DRUNK



A CITIZENS' PROJECT TO REMOVE INTOXICATED DRIVERS

 177 FRITZ PLACE
 WALLINGFORD, CT 06492
 (203) 265-6216

Dear Everyone,

HB 5429

Febr. 1, 1985

Please help change the odds to be in favor of the innocent victim. Please we need a "Per Se" law. We have to stop these needless injuries & deaths. We have to shift sympathies away from the drunk driver and over to his or her victims. Illegal per se means its an offense to drive or otherwise be in control of an auto with a 0.10 - Percent or greater BAC. It makes it easier and much SAFER for arresting officers to structure drunk driving cases. The officers no longer have to follow motorists committing dangerous acts in order to document the violations. Little supporting testimony of dangerous driving is necessary as evidence in court if illegal per se is used in every state. A driver with a BAC of 0.10 % is 6 times more likely than a sober one to have an accident. Studies have shown, that the more serious the crash, the higher the drinker-driver intoxication level. Please fight for the Constitutional Rights of the innocent victims. Thank you ever so much. Please Care for the People you represent.

Sincerely,

Nancy - President

Jim Ricci

Wallingford RID

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March 12, 1985

Hi - We could stay here for days
to listen to facts, figures, excuses,
instead of dealing with the problems
People are dying because of Drunk
Drivers. Cont Page 1.

Sincerely
Nancy Ricci