State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of the Office of Chief Public Defender
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PUBLIC SAFETY AND SECURITY COMMITTEE – FEBRUARY 29, 2024

Raised Bill No. 230
AN ACT CONCERNING MAILING OF TEST RESULTS RELATED TO OPERATING A MOTOR VEHICLE OR VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

The Office of Chief Public Defender opposes ***Raised Bill No. 230, An Act Concerning Mailing Of Test Results Related To Operating A Motor Vehicle Or Vessel Under The Influence Of Alcohol Or Drugs***. The proposed changes would eliminate any requirement that anything other than breath test results be mailed to an arrestee. Under the proposed change, the arrestee would receive, via mail, only the breath test results but not the urine test[1] results. If passed, this proposal would have a disproportionate effect on those who were subjected to urinalysis screens (a number which will grow given the increase in drug-DUIs to come) and who need legal representation. Arrestees who have received breath samples can immediately take those results and consult with an attorney regarding the strength of their case. However an arrestee awaiting the urine toxicology results cannot under this proposed change.

[1] Urine test results may show prescription drugs such as a regularly prescribed opiate that the person is acclimated to, or perhaps medications for a mental health condition that are taken as prescribed such as Adderall for Attention Deficit. Such medications may be taken as prescribed and appropriately, although the urine test will not reveal that. The urine test results simply say that the sample is positive for those drugs without quantifying how much that person had in their system or when they took it. It is possible that such persons may not be under the influence of that drug or unsafe to drive for that reason.

The test results are crucial in determining how to proceed to defend the charges in that test results are absolutely vital to an understanding of what a person's exposure is. The test results are key to determining whether to go to trial, seek a pretrial diversionary program, or try to make a plea arrangement. If adopted, Public Defender clients and pro se litigants could be disadvantaged, through no fault of their own, aside from being financially limited or by exercising their right to defend themselves.

In a criminal prosecution, defense attorneys are required to request the test results in criminal proceedings. What they do is *request*, for the first time, discovery to which they are entitled. This is essential evidence that, if not *Brady* material, certainly a part of one of the most basic notions of due process that our Uniform Administrative Procedure Act outlines in 4-177c[2], a concept backed by countless judicial opinions of all levels and jurisdictions of court.

Requiring the mailing of these results is not redundant as it does not create a duplication of efforts. That is because, unlike almost all other criminal charges, a charge of operating under the influence (OUI) triggers a separate but oftentimes more consequential state administrative prosecution through the Department of Motor Vehicles (DMV) that, if successful, results in the suspension of one's license and the imposition of an expensive and burdensome Ignition Interlock Device (IID) requirement.

Although indigent persons charged with an OUI are entitled to a Public Defender for criminal proceedings, they are **not** entitled to such representation at the DMV hearing. A potential Public Defender client or potential client, or a pro se litigant with a first-time offense ***may*** be reasonably amenable to participating in the Impaired Driver Intervention Program (IDIP), a pretrial diversionary program, without issue in court. But without legal representation and no analog diversion for indigent first-time offenders at such DMV proceedings are disadvantaged, despite the fact that they may wish to fight the DMV administrative action. If there were the ability to delay the sanctions, fine, but there is not. The DMV will enforce the provisions of C.G.S. 14-227b. A person only has 7 days to request a hearing on their suspension pursuant to section 14-227b-12 of the state regulations and having a toxicology report would surely factor in to whether or not that person wants to expend the time and resources into litigating that hearing. In accordance with section 14-227b-15 of the same regulations, a person cannot

[2] (a) In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.

postpone the suspension of their license, after requesting a hearing, longer than 15 days. In sum, they are certain to sustain a severe penalty while not being certain at all that they can be armed with the information necessary to combat it if the required mail delivery provision is eliminated.

Therefore, this office requests that no action be taken on this bill. Thank you.